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# federal register

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## WHAT IT IS AND HOW TO USE IT

**FOR:** Any person who uses the Federal Register and Code of Federal Regulations.

**WHO:** The Office of the Federal Register.

**WHAT:** Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### WASHINGTON, DC

**WHEN:** March 28, at 9:00 a.m.
**WHERE:** Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC
**RESERVATIONS:** 202–523–5240

### MIAMI, FL

**WHEN:** April 18:
1st Session 9:00 am to 12 noon.
2nd Session 1:30 pm to 4:30 pm
**WHERE:** 51 Southwest First Avenue
Room 914
Miami, FL
**RESERVATIONS:** 1–800–347–1997

### CHICAGO, IL

**WHEN:** April 25, at 9:00 am
**WHERE:** 219 S. Dearborn Street
Conference Room 1220
Chicago, IL
**RESERVATIONS:** 1–800–366–2998

### WASHINGTON, DC

**WHEN:** May 23, at 9:00 am
**WHERE:** Office of the Federal Register
First Floor Conference Room
1100 L Street, NW, Washington, DC
**RESERVATIONS:** 202–523–5240 (voice); 202–523–5229 (TDD)

**NOTE:** There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.

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**Separate Parts In This Issue**



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**Reader Aids**
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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# Presidential Documents

Title 3—

The President

**Presidential Determination No. 91–21 of February 27, 1991**

## Determination Under Section 633(a) of the Foreign Assistance Act of 1961, as Amended, Waiving Requirements With Respect to Close Out of Prior Year Appropriations Accounts

**Memorandum for the Secretary of State**

Pursuant to the authority vested in me by section 633(a) of the Foreign Assistance Act of 1961, as amended (the "Act"), 22 U.S.C. 2393(a), I hereby determine it to be in furtherance of the purposes of the Act that the functions authorized by the Act be performed without regard to section 1405 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510), and amendments contained therein.

This determination shall apply only to funds appropriated to carry out the provisions of the Act that were appropriated for fiscal year 1984 and for prior fiscal years, and shall suspend the application of the provisions of section 1405 of the National Defense Authorization Act for Fiscal Year 1991, and amendments contained therein, through September 30, 1992.

You are authorized and directed to publish this determination in the **Federal Register.**

George Bush

THE WHITE HOUSE,
*Washington, February 27, 1991.*

[FR Doc. 91–6309
Filed 3–12–91; 4:24 pm]
Billing code 3195–01–M

# Presidential Documents

**Presidential Determination No. 91–22 of March 1, 1991**

## Certifications for Major Narcotics Producing and Transit Countries

**Memorandum for the Secretary of State**

By virtue of the authority vested in me by Section 481(h)(2)(A)(i) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2291(h)(2)(A)(i) ("the Act"), I hereby determine and certify that the following major narcotics producing and/or major narcotics transit countries/dependent territory have cooperated fully with the United States, or taken adequate steps on their own, to control narcotics production, trafficking and money laundering:

The Bahamas, Belize, Bolivia, Brazil, Colombia, Ecuador, Guatemala, Hong Kong, India, Jamaica, Laos, Malaysia, Mexico, Morocco, Nigeria, Pakistan, Panama, Paraguay, Peru, and Thailand.

By virtue of the authority vested in me by Section 481(h)(2)(A)(ii) of the Act, 22 U.S.C. 2291(h)(2)(A)(ii), I hereby determine that it is in vital national interests of the United States to certify the following country:

Lebanon.

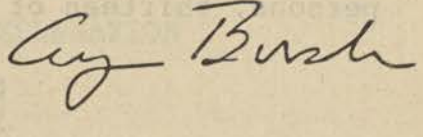
Information for this country as required under Section 481(h)(2)(B) of the Act, 22 U.S.C. 2291(h)(2)(B), is enclosed.

I have determined that the following major producing and/or major transit countries do not meet the standards set forth in Section 481(h)(2)(A) of the Act, 22 U.S.C. 2291(h)(2)(A):

Afghanistan, Burma, Iran, and Syria.

In making these determinations, I have considered the factors set forth in Section 481(h)(3) of the Act, 22 U.S.C. 2291(h)(3) based on the information contained in the International Narcotics Control Strategy Report of 1991. Because the performance of these countries varies, I have attached an explanatory statement in each case.

You are hereby authorized and directed to report this determination to the Congress immediately and to publish it in the **Federal Register.**



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STATEMENT OF EXPLANATION

THE BAHAMAS

The United States enjoyed excellent cooperation on narcotics control from The Bahamas, a major transit country for cocaine destined for the United States. Expanded U.S.-Bahamian interdiction efforts and unilateral measures enforced by the Bahamian Government have encouraged some traffickers to seek alternate routes to the United States and have forced others to adopt methods of trafficking through The Bahamas which are more sophisticated and, therefore, less vulnerable to detection and apprehension by law enforcement. In 1990, The Bahamas made a strong effort to curb official corruption. We are encouraged by this trend, but more attention needs to be directed at this problem and towards adopting enforcement measures that effectively respond to changing trafficking methods.

The USG believes substantial quantities of cocaine continue to transit the Bahamian archipelago. Nonetheless, cocaine seizures in The Bahamas and adjacent waters decreased from 8.8 metric tons in 1989 to 3.5 metric tons in 1990. Marijuana seizures went from 0.6 metric tons to 2.3 metric tons in 1990. By comparison, in 1987, 12.6 metric tons of cocaine and 160.5 metric tons of marijuana were seized. Bahamian cooperation with the USG, particularly with U.S. law enforcement agencies, clearly has acted as a deterrent to drug trafficking through The Bahamas.

In 1990, the United States, The Bahamas, and the United Kingdom signed an agreement that opened the way for joint narcotics law enforcement in the Turks and Caicos Islands (TCI). As a result, an Operation Bahamas and Turks and Caicos (OPBAT) base was established in TCI in September, extending interdiction coverage southeastward and bringing to four the total number of bases that are now functioning. Other significant developments in 1990 included the conviction on narcotics charges of major Bahamian drug trafficker Livingston Gray and the successful completion of a year-long drug conspiracy/corruption case which, by the end of the year, led to the arrests by the Bahamian Government of twenty-six persons, thirteen of whom were government officials.

STATEMENT OF EXPLANATION

BELIZE

Joint U.S.-Belizian aerial spray programs and other Government of Belize efforts resulted in the reduction of marijuana production in the country to 66 metric tons, about 10 percent of the peak production levels of five years ago. Narcotics control law enforcement capabilities in Belize improved, with a number of special operations during the year resulting in the arrest of traffickers and destruction of

narcotics. Belize has enacted new legislation to modernize its criminal code to permit asset seizures. The government has begun to deal with cases of corruption among low-level officials in the police and defense force, but corruption remains a significant impediment to law enforcement efforts in Belize.

## STATEMENT OF EXPLANATION

## BOLIVIA

The Government of Bolivia (GOB) cooperated with USG efforts to reduce production of refined cocaine products for export to the United States or other markets. Increasingly effective law enforcement operations are exemplified by the successful dismantling of a major cocaine trafficking organization led by Carmelo "Meco" Dominquez, simultaneous arrest of key members, and seizure of assets. Joint police, Air Force and Navy task forces are expanding counter-narcotics activities to disrupt trafficking patterns and enforce narcotics laws in areas of drug production or trafficking activity.

An estimated 51,900 hectares of coca were under cultivation in 1990, a decline from 53,900 hectares in 1989. Coca eradication during the year reached a record level of over 8,000 hectares. This is the first time a net reduction in the amount of coca cultivation has been attained in Bolivia. The GOB continued to maintain its economic model and to cooperate effectively in implementation of significant U.S. alternative agricultural and economic development assistance programs.

Notwithstanding continuing GOB cooperation and important successes achieved in 1990 -- largely due to significant GOB progress in developing institutional law enforcement capabilities -- sustained, effective progress on counter-narcotics was impeded by the ill effects of pervasive corruption. In addition, Bolivia did not sign a modern extradition treaty with the United States, which was negotiated between the two governments in 1990.

## STATEMENT OF EXPLANATION

## BRAZIL

Brazil is a major transshipment point for Colombian, Peruvian, and Bolivian traffickers. Brazil engaged in a sustained, but limited counter-narcotics effort in 1990. Despite severe economic problems and major government austerity measures, President Collor publicly declared war on drug trafficking and abuse in 1990. Because of severe budgetary restraints, Government of Brazil (GOB) counter-narcotics efforts, while effective, did not increase to match the magnitude of the narcotics problem in Brazil.

The size of Brazil remained a major impediment to focusing limited resources against narcotics trafficking within its borders. An additional problem continued to be the understaffing and underfunding of the Federal Police involved in narcotics operations.

Brazilian law enforcement efforts led to the destruction of approximately 14 metric tons of coca leaf, while coca crop surveys indicate that indigenous coca cultivation declined. Enforcement efforts also led to a 29 percent increase in cocaine HCl seizures (2,190 kgs). Cocaine processing lab seizure statistics remained disappointing, with the same number (4) seized as in 1989.

## STATEMENT OF EXPLANATION

## COLOMBIA

The USG assisted the Government of Colombia (GOC) in maintaining its vigorous campaign against narcotrafficking organizations, with a 37 percent increase in seizures over the previous year. Accomplishments include the seizure of over 50 metric tons of cocaine, the destruction of over 300 processing labs and 7,000 arrests. Colombian police have also eradicated virtually all marijuana cultivation in traditional growing areas. The GOC, led by the National Police, severely damaged the leadership structure of the Medellin Cartel by keeping drug kingpin Pablo Escobar constantly on the run, and arresting or killing his key lieutenants. The GOC also extradited 14 drug suspects to the United States. At least two major traffickers have surrendered under President Gaviria's amnesty decrees which guarantee confessing traffickers a shortened sentence and no extradition. Colombian National Police paid a high price for their role in the drug campaign with 420 deaths at the hands of traffickers.

Nevertheless, Colombian traffickers continued to move large quantities of cocaine out of Colombia. Although the level of trafficker terrorism diminished somewhat, cartel leaders still exerted tremendous influence through kidnapping, intimidation and corruption. Additionally, almost all of the successful counter-narcotics operations were focused against the Medellin Cartel, allowing the Cali Cartel to continue lower profile but effective drug smuggling operations.

It is unclear whether more major traffickers will surrender under the GOC's plea bargaining decree. This strategy's success hinges on revamping Colombia's judicial system, which is highly susceptible to threats and corruption, as well as on continued police pressure against the traffickers. The USG strongly supports efforts to reform and strengthen Colombia's judicial system, a long-term process, but is concerned that justice be done in the cases of drug traffickers who have surrendered. The USG is committed to assisting the GOC to attain our common goals of dismantling the trafficking networks and stemming the flow of cocaine from Colombia to the United States.

## STATEMENT OF EXPLANATION

### ECUADOR

In 1990, the Government of Ecuador continued its sustained efforts to prevent coca cultivation from taking hold in Ecuador. The Ecuadorian National Police's anti-drug arm, Interpol, conducted coca and marijuana reconnaissance and eradication operations along the border and in the Pacto area of Pichincha Province. USG reconnaissance did not reveal any new coca cultivation despite meticulous surveys in all but the southernmost portion of the country.

In 1990, Interpol, putting its limited resources to excellent use, seized over 400 kgs of cocaine HCl, 550 kilos of cocaine base and paste, and 400 kgs of marijuana. Interpol's special precursor chemicals control unit completed its computerized listing of legitimate chemical importers. It also established a monitoring program to track chemicals that can be diverted to produce illicit drugs. The unit has investigated a number of reports of illegal imports, diversions, and misuse of chemicals for drug production. During 1990, a special group of Interpol officers assisted the DEA with the identification of suspect chemical companies.

Two major developments in 1990 were the enactment of a comprehensive new drug law and the ratification of the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. The drug law established a ministerial-level National Drug Council, stiffened sentences for related drug crimes, criminalized diversion of essential and precursor chemicals, and broadened police authorities in drug crimes.

The USG has monitored with concern the increase of cocaine and chemicals transiting Ecuador. Reports indicate that Colombians have invested heavily in Ecuadorian businesses, including transportation and fruit-packing companies. Suspected Colombian traffickers have also bought properties in areas well suited for coca cultivation.

## STATEMENT OF EXPLANATION

### GUATEMALA

Guatemala is now included in the list of countries to be certified as it is becoming both a major producer and a major transit country despite Government of Guatemala (GOG) efforts to prevent this. Cocaine seized through combined GOG/DEA interdiction efforts totalled over 15 metric tons, compared to 4 in 1989. This year, after eradication, an estimated 845 hectares of opium poppy could have been available for harvesting, a 31 percent drop from last year's estimate of 1,225 hectares.

During 1990, the government of President Cerezo provided excellent cooperation with the State Department's aerial eradication program of opium fields and with DEA, conducting an increasing number of interdiction operations. For the first time, a morphine laboratory was seized by the GOG. Also, cooperation between the Governments of Guatemala and Mexico increased in an effort to reduce drug shipments across their common border. The government of President Cerezo, however, was less energetic in conducting full investigations into allegations of official corruption related to narcotics.

Newly-elected President Serrano has clearly pronounced a commitment to combat narcotics and corruption and to professionalize narcotic law enforcement programs. We hope to have a close, cooperative relationship in this effort.

## STATEMENT OF EXPLANATION

## HONG KONG

Hong Kong remained an important transit point for heroin and opium. Local drug traffickers use the territory to conduct business and launder drug proceeds. During 1990, Hong Kong continued its highly effective enforcement record and its excellent cooperation with U.S. law enforcement authorities, including several successful joint investigations. The United States and Hong Kong reached agreement under the terms of the Hong Kong Drug Trafficking Ordinance (1989) that allows Hong Kong to enforce asset forfeiture orders. In addition, the Hong Kong Government cooperated with the USG on money laundering cases and extraditions.

STATEMENT OF EXPLANATION

INDIA

India has become a major conduit for heroin trafficking from both the Golden Crescent and the Golden Triangle because of increased production and the disruption of traditional routes through Iran. India cooperates with the DEA on enforcement matters and with the UN in other counter-narcotics programs. Indian authorities have yet to devote adequate resources or priority to stemming the flow of illicit drugs through India. The Government of India (GOI) also has not fully addressed its growing drug addiction problem, estimated to be at four million addicts.

India is also the world's leading producer of licit drugs. GOI continues to take steps to prevent diversion of its licit cultivation and production, including reduction of the amount of land licensed for licit cultivation and the number of farmers licensed to grow licit opium. The Government has also taken steps to reduce production and stockpiles to a level consistent with demand in the international market. Illicit cultivation and production of opium remains illegal throughout India and the Government has eradicated illegal fields of poppy when located.

Nevertheless, greater attention needs to be given to reducing the possibility of diversion through improved monitoring techniques and practices. The GOI cooperates with the United Nations Fund for Drug Abuse Control (UNFDAC) in this regard.

STATEMENT OF EXPLANATION

JAMAICA

Operation Buccaneer, the Government of Jamaica's (GOJ) marijuana control effort, is in its fifth consecutive year. While over 1,000 hectares of marijuana were eradicated in 1990, a lack of U.S. aviation resources during the year prevented the GOJ from making more substantial reductions in the crop. Cultivation, after eradication, expanded significantly in 1990. The increase indicates that the GOJ will need to make an expanded effort to bring down net marijuana cultivation in 1991.

The GOJ, however, has made significant gains in seizing cocaine that transits Jamaica. Two large seizures in August (874 pounds) and October (652 pounds) contributed to 1990 seizures of 1,672 pounds compared to 28 pounds in 1989. While the GOJ has sought to eliminate bribery and other forms of public corruption connected with drug dealers, low salaries continued to make security force personnel vulnerable to payoffs by narcotics traffickers.

## STATEMENT OF EXPLANATION

### LAOS

While making progress, Laos remains the third major producing opium country. The positive change in drug control policies and broadened cooperation that was noted in connection with last year's certification of Laos continued in 1990. An estimated 27 percent decrease in opium poppy cultivation, due in part to increased central government persuasion and programs as well as continued implementation of large alternative crop projects, one funded by the USG, were positive accomplishments during the year. Lao Government (GOL) authorization of and participation in DEA and Customs training courses was an encouraging step. Enforcement measures, which previously were unknown, began in 1990 as the government reported seizures of a ton of marijuana, opium seizures and arrests, and the destruction of heroin refinery components and precursor chemicals.

Of serious concern to the United States were continued credible reports of the involvement in the drug trade of local and military officials, particularly from the para-statal Mountainous Area Development Company. These raised questions about the GOL commitment to counter-narcotics efforts. Moreover, the GOL has not facilitated cooperative activities with DEA, although the Lao have met several time with DEA representatives and other U.S. counter-narcotics officials.

This certification is made on the belief that the Lao Government is endeavoring to strengthen its drug control efforts to continue progress on reducing cultivation, and to curtail corruption among individuals and institutions. In addition, the United States will push for more law enforcement actions as a major element in our relationship, and it will be a central concern for certification next year.

STATEMENT OF EXPLANATION

MALAYSIA

Malaysia is an important processing and trafficking center for opium grown in other countries. Much of the product is consumed locally but significant amounts continue to transit Malavsia destined for world markets.

Malaysia continued its strong enforcement efforts in 1990, seizing about 30 kgs of U.S.-bound heroin as well as the same high level of raw opium as in the previous year. Malaysia has an active demand reduction program and can point to a decrease in the growth rate of the new addict population as evidence of its success. In 1990, the United States made a small grant to the anti-drug police, and top drug officials visited the United States. Malaysia also put three mobile drug prevention vans into service and instituted drug screening at the Thai-Malay border for suspected users.

STATEMENT OF EXPLANATION

MEXICO

Mexico's anti-narcotics record for 1990 is impressive -- not only in terms of seizures, arrests and eradication, but in the broader sense of an overall, systemic improvement in narcotics control. This was due, in large part, to the commitment and leadership of President Carlos Salinas de Gortari. Under his direction, Mexico has strengthened its drug laws, increased funding for anti-narcotics programs, intensified both its eradication and interdiction efforts, and implemented tough anti-corruption measures.

Mexico seized a record 46.5 metric tons of cocaine in 1990, second only to Colombia. The Government of Mexico also issued new directives to the Federal Judicial Police to ensure protection of human and civil rights. The GOM continued to expand anti-narcotics cooperation with the USG; our governments exchanged instruments of ratification for the broad agreement on narcotics cooperation (Chiles Amendment Agreement) paving the way for greater cooperation in the future.

Mexico is commended for its accomplishments in 1990, but there is still much to do. Mexico remains an important supplier of marijuana and heroin to the United States and a major conduit for the movement of cocaine from South America. President Salinas has moved vigorously to combat official corruption, which continues to impede efforts to curb drug trafficking in Mexico.

STATEMENT OF EXPLANATION

MOROCCO

Morocco is a traditional producer of cannabis and hashish, as well as a growing transit point for heroin and cocaine destined primarily for European consumption. Cannabis is mainly cultivated in the northern mountainous region called the Rif. A recently initiated United Nations Fund for Drug Abuse Control crop substitution project in the region has resulted in a significant reduction in cannabis production in the project area.

There is increasing Moroccan and European concern that cannabis smuggling networks will diversify their activities and begin trafficking in heroin from the Golden Crescent and cocaine from South America. The lack of direct commercial air connections to the United States limits the trans-Atlantic flow of narcotics from Morocco except indirectly through Europe.

Following the signing of a bilateral narcotics agreement with the United States in 1989, Morocco signed anti-narcotics Mutual Legal Assistance Agreements with the European Community and Spain in 1990. Agreement has been reached with the United States on a Mutual Legal Assistance Treaty (MLAT) but the King has not yet approved its ratification. Counter-narcotics cooperation with the USG has been limited, but is expanding.

STATEMENT OF EXPLANATION

NIGERIA

Nigeria continues as a major heroin trafficking and narcotics transshipment point to Europe and the United States. There are at least seven known trafficking organizations in the country which operate with little interference or difficulty. Corruption, as well as liberal banking regulations which facilitate narcotics money laundering, remain serious problems.

The Federal Military Government of Nigeria (FMG) intensified its cooperation with the USG during 1990. A task force aimed at reducing Nigeria's involvement in narcotics trafficking by more vigorously investigating and prosecuting drug traffickers was established and more stringent visa and passport controls were instituted. Money laundering investigations have been broadened, improved airport security and narcotics detection measures installed and two new drug offenses enacted into law.

While no major traffickers have been arrested and seizures have been primarily small amounts on individual couriers, overall arrests remain constant, total seizures are up slightly and the FMG has taken a strong public stance opposing narcotics. The new Nigerian Drug Law Enforcement Agency (NDLEA) has requested increased budgetary and personnel resources to augment its counter-narcotics efforts. Continued high-level FMG attention and priority as well as resources need to be given to anti-narcotics activities to bring more positive results.

## STATEMENT OF EXPLANATION

## PAKISTAN

Pakistan's counter-narcotics efforts in 1990 were affected by a change in government, an interim government, and national election campaigns followed by a transition period. Nevertheless, the Government of Pakistan (GOP) continued successfully to enforce its ban on opium poppy cultivation in the Northwest Frontier Province (NWFP) in the face of increased efforts by farmers to increase production. Although total opium production is estimated to have increased to 165 metric tons in 1990, up from 130 metric tons in 1989, the government's measures prevented the crop from equaling the 1988 pre-drought level of 205 metric tons.

The results of GOP law enforcement measures remain mixed. No significant action was taken against heroin laboratories in the NWFP, and no major traffickers were convicted although two are under arrest. However, the para-military Frontier Corps uncovered a major narcotics cache in Baluchistan Province, including nearly two tons of heroin, 100 pounds of opium, and seven tons of hashish intended for export, and has been more actively engaged in anti-drug patrols along the border. Moreover, the Frontier Corps and the Customs Service have made several subsequent large seizures. Meanwhile, the GOP has taken action to stop the import and delivery of 19 tons of acetic anhydride to heroin labs.

Following the election, the government established a new separate Ministry of Narcotics Control to coordinate all counter-narcotics efforts. The government also has enunciated a policy of giving a higher priority to counter-narcotics activities. On the other hand, the Elite Units, which the USG and GOP agreed to establish in mid-1989, still lack the legal authority to function. Continued GOP commitment and cooperation between the USG and the GOP will be essential to improving GOP performance in the year ahead. Expanded law enforcement will be a central concern for certification next year.

## STATEMENT OF EXPLANATION

### PANAMA

After the U.S. military action, the Government of Panama (GOP) had to create a drug policy and counter-narcotics infrastructure from the ground up. Although its record of achievement has been spotty, it is clear that the new GOP has joined the international effort to fight drugs. It signed a Chiles Amendment Agreement on Narcotics Cooperation and a bilateral narcotics control program agreement with the USG. It has cooperated with USG officials in tracing narcotics dollars through bank accounts in Panama, begun enforcing tough drug laws which had earlier been ignored, overturned previous interpretations of laws which had barred bank records from law enforcement scrutiny, signed an agreement on controlling essential chemicals, and passed a decree and implementing regulations against money laundering. The GOP has reorganized its anti-narcotics police, Customs and Maritime Services. The result was record seizures of cocaine in 1990. Panamanian popular support for demand reduction and stronger law enforcement is exemplary.

Despite these impressive steps, the GOP has not demonstrated the political will to conclude a Mutual Legal Assistance Agreement with the United States, and a Shiprider Agreement is in the final stages of negotiation after lengthy delays. These agreements would greatly facilitate mutual law enforcement cooperation. The GOP has yet to submit the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances to the Legislative Assembly for ratification, but has indicated its intention to do so at the March 1991 National Assembly session. Its criminal justice system is overburdened and in chaos, with a backlog of over 17,000 criminal cases -- including drug cases.

The USG is concerned that drug proceeds continue to be laundered through Panamanian banks and the Colon Free Zone. Money laundering in Panama continues to be its most serious narcotics control problem. In this regard, there have been allegations of official corruption. We are aware that Panamanian authorities are investigating these allegations. Our concern is that these investigations be pursued rigorously and that indictments be issued where warranted. We have told the Panamanian Government of our concern.

Although the GOP's record is mixed, its achievements, particularly in the area of law enforcement, indicate a serious desire to work domestically and internationally to fight the war on drugs. The USG intends to work closely with the Panamanian Government to help improve its performance against drug trafficking and money laundering.

## STATEMENT OF EXPLANATION

### PARAGUAY

During 1990, the Government of Paraguay (GOP) made progress in its efforts to establish a credible counter-narcotics program. Following the firing of 19 corrupt officers from the National Narcotics Police (DINAR), DINAR's budget was more than doubled and a joint police-military counter-narcotics strike force was established, trained, and fielded. Two generals were removed for involvement in narcotics trafficking, the first such action against army commanders since the 1940's. The GOP, with USG assistance, is developing a national drug prevention strategy and is cooperating more effectively with the USG in making narcotics seizures.

On the other hand, the GOP's record was spotty. Corruption, enforcement activities, and drug money laundering remain areas of particular concern and will require continued attention.

## STATEMENT OF EXPLANATION

### PERU

Peru's Upper Huallaga Valley (UHV) contains the world's largest concentration of coca cultivations as well as numerous labs for converting coca leaf into base. Although the UHV is a military emergency zone, the Peruvian military did not generally support Peruvian law enforcement units in counter-narcotics activities, nor were they able to keep key areas free from insurgent control. As in 1989, serious military and police corruption impeded efforts to expand counter-narcotics missions. There were, however, also indications in late 1990 that the Peruvian military had started supporting police counter-narcotics efforts in the UHV as a matter of policy.

Despite the security threat posed by the Shining Path and non-cooperation of the Peruvian military, Peruvian law enforcement agencies destroyed more labs and seized more cocaine than in previous years. However, these efforts only had a marginal effect on the overall flow of cocaine base from Peru.

President Fujimori who was inaugurated on July 18, 1990, has taken on active interest in improving Peru's performance. He proposed a promising comprehensive narcotics strategy in late 1990, but it has not yet been implemented. The strategy would place narcotics-related military and law enforcement efforts, demand reduction and alternative development under one specialized governmental office (the Autonomous Authority for Alternative Development). We are engaged in intense discussions with the Peruvian Government on the basis of this proposal and are hopeful that our two governments will be able to work together to combat narcotics production and trafficking in the future. The ability of the Peruvian Government to implement its comprehensive narcotics strategy in 1991 will be an important indicator of its resolve on narcotics issues.

If not for the Presidential transition in Peru and the positive steps taken by Peru during the last days of 1990, certification for Peru would have been very problematic. The President has not made the Determination, pursuant to Section 4(a) of the 1990 International Narcotics Control Act, which is required to release counter-narcotics-related economic and military assistance for Peru in FY-91. Funding for Peru will not be released until we have completed a comprehensive counter-narcotics cooperation agreement and until more effective law enforcement actions and police-military cooperation are under way.

## STATEMENT OF EXPLANATION

## THAILAND

U.S. narcotics interests in Thailand, a key trafficking conduit for drugs produced in neighboring countries, are largely in law enforcement. We have supported Thai narcotics suppression efforts for twenty years, and DEA has a strong working relationship with the Thai police. Nevertheless, greatly increased production in Burma has substantially increased the flow of narcotics through Thailand. Thai seizures and arrests of major traffickers have not kept pace. Moreover, the network of relationships developed for security purposes between Thai military and government officials and ethnic groups which traffic narcotics from Burma creates an environment in which narcotics-related corruption exists.

The United States has expressed its concern over this situation to the previous Government of Thailand (RTG). We have also raised with the previous RTG recurring allegations that some politicians and Thai officials have been involved in or abetted narcotics trafficking. For its part, the previous RTG said it will take action if we can provide firm information usable in legal proceedings.

In 1990, the Thai police moved to improve its counter-narcotics institutional structure by creating a new Narcotics Suppression Bureau which combines and focuses duties and responsibilities of formerly disparate units. Nonetheless, the USG believes greater effort is required to better control the narcotics threat in Thailand.

A military coup d'etat occurred on February 23, 1991. While military and economic assistance has been suspended because of the coup, narcotics aid continues to provide support for law enforcement and crop substitution programs. Serious efforts by the RTG to reduce corruption and the flow of drugs through Thailand will be a central concern for certification next year.

## STATEMENTS IN SUPPORT OF DENIALS OF CERTIFICATION

### AFGHANISTAN

Afghanistan is considered the second largest producer of opium in the world with an estimated harvest of 585 metric tons in 1989 and 415 metric tons in 1990. The drop in production during 1990 was the result of a voluntary poppy ban in the Helmand Valley.

The United States has had no diplomatic relations or counter-narcotics cooperation with the Government of Afghanistan. The political turmoil and lack of government control over large areas of the country precluded effective anti-narcotics activity in the opium producing provinces. There is no indication that the GOA has engaged in serious counter-narcotics efforts.

### BURMA

Despite three highly publicized burnings of narcotics and refinery equipment, the Government of Burma did not demonstrate a comprehensive interest in narcotics law enforcement in 1990. Opium production, down slightly from the previous year's level, was nonetheless nearly twice as large as that of two years ago, and Burma remains the largest opium producing country in the world. Continued high levels of production are due to the abandonment of eradication and increased cultivation since 1988, as well as the control of poppy cultivation areas by various ethnic insurgent and trafficking groups. Burma's military rulers have reached agreements with a number of insurgent groups which permit continued poppy cultivation, heroin production, and narcotics trafficking in the short-term in return for peace and long-term rural development and crop substitution projects. Burma cooperated with the United States on narcotics control until September 1988. At that time, narcotics assistance was suspended along with other U.S. assistance due to serious human rights violations. Law enforcement liaison with DEA has continued, but the level of cooperation with the United States on anti-drug matters was minimal.

## IRAN

Iran cannot be certified, as it remains unwilling to cooperate with the United States on counter-narcotics, and we have no conclusive evidence that the Government of Iran has taken effective steps on its own to stem drug production or trafficking. Although it has begun anti-drug discussions with the USSR and United Nations Fund for Drug Abuse Control, it has not begun to cooperate with its neighbors to curtail production in, or trafficking through, its territory.

## SYRIA

Syria is a transit point for illicit narcotics as well as a heroin refining center. Members of the Syrian military continue to control the Bekaa Valley of Lebanon, where we believe they facilitate and profit from drug trafficking in this key production area. Discussions with USG officials on narcotics cooperation, which were reinstituted in 1989, continued in 1990, but there have been no actions taken by the Syrian Arab Republic Government to indicate a serious desire to cooperate with the USG or to take steps on its own against drug trafficking.

## JUSTIFICATION FOR NATIONAL INTEREST CERTIFICATION

## LEBANON

During 1990, the United States had no narcotics cooperation with Lebanese authorities as a result of continuing political and social turmoil and the government's inability to take action against either poppy or hashish cultivation or trafficking. The Bekaa Valley, the country's central producing region, remains under the control of the armed forces of Syria, which fail to enforce anti-narcotics controls. Lebanese hashish and refined heroin are distributed throughout the Middle East and onward to Europe and the United States.

U.S. national interests would be damaged by a weakening or collapse of the Government of Lebanon. The United States needs to have flexibility to respond to Lebanon's legitimate needs for economic and developmental assistance. Such assistance could be critical in the Government of Lebanon's fight for survival and attempt to expand its control over the country. Broad United States policy objectives in Lebanon and the region, including narcotics policy objectives, would be at risk if the Government of Lebanon ceased to exist.

There are no countervailing risks to other United States interests as the Government of Lebanon presently has no capability to obstruct or prevent narcotics production or trafficking. United States narcotics policy seeks to strengthen such capability.

For these reasons, Lebanon is granted a national interest waiver.

# Rules and Regulations

Federal Register
Vol. 56, No. 50
Thursday, March 14, 1991



## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 319

[Docket No. 91-014]

### Importation of Apples, Peaches, and Citrus from Sonora

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the Fruits and Vegetables regulations by adding Empalme and Guaymas to the list of definite areas in Sonora, Mexico, determined to be free from certain injurious insect pests and from which apples, grapefruit, oranges, peaches, and tangerines may be imported without treatment for these pests. We believe that these municipalities are free from certain injurious insect pests known to attack apples, grapefruit, oranges, peaches, and tangerines, and that are known to occur in Mexico. This action allows the importation of this fruit into the United States from Empalme and Guaymas, in accordance with the regulations.

**EFFECTIVE DATE:** March 11, 1991.

**FOR FURTHER INFORMATION CONTACT:** Frank E. Cooper, Senior Operations Officer, Port Operations Staff, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8645.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Fruits and Vegetables regulations in 7 CFR 319.56 *et seq.* (referred to below as the regulations) impose restrictions on the importation of fruits and vegetables in order to prevent the introduction and dissemination of injurious insects, including fruit flies, that are new to or not widely distributed within and throughout the United States. Paragraphs (e) and (f) of § 319.56-2 contain requirements for the importation of certain fruits and vegetables based on their origin in a definite area or district. The definite area or district must meet certain criteria, including criteria designed to ensure that the area is free from all or certain injurious insects. Paragraph (h) of § 319.56-2 lists certain municipalities in Sonora, Mexico, that meet the criteria with regard to five listed insect pests: *Ceratitis capitata, Anastrepha ludens, A. serpentina, A. obliqua, and A. fraterculus.* Apples, grapefruit, oranges, peaches, and tangerines from municipalities listed in paragraph (h) may be imported into the United States without treatment for the five listed insect pests.

In a document published in the **Federal Register** on November 26, 1990, (55 FR 49053-49054, Docket Number 90-197) we proposed to amend the regulations by adding Empalme and Guaymas to the list of municipalities in Sonora, Mexico, determined to be free from the five listed fruit flies and from which apples, grapefruit, oranges, peaches and tangerines may be imported into the United States without treatment for these pests. We have determined that Empalme and Guaymas meet all the criteria contained in § 319.56-2(e)(4) and (f).

Comments on the proposed rule were required to be received on or before January 25, 1991. We received seven comments: Five from agricultural organizations in Sonora, one from the government of Sonora, and one from the agricultural counselor of Mexico. All seven comments favored the proposed rule. They indicated, generally, that its adoption as a final rule would benefit fruit-producers in Sonora by expanding their markets, and would benefit consumers in the United States by supplementing their fruit supply during periods when certain domestically-grown fruit may not be as readily available. Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposal as a final rule without change.

#### Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register.** Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The shipping season for Sonoran citrus is in progress. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit during this year's shipping season. Therefore, the Administrator of APHIS has determined that this rule should be effective upon signature.

#### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action allows the importation of apples, grapefruit, oranges, peaches, and tangerines from Empalme and Guaymas into the United States without treatment for the five listed fruit flies. This could increase imports of these articles into the United States, since import costs will be lowered through the elimination of treatment costs. The small entities that could be affected by this action include fumigators at the Mexican border, importers of apples, grapefruit, oranges, peaches, and tangerines; and domestic growers, distributors, and retailers of these fruits.

The economic impact on these entities should be insignificant, since the amount of fruit imported into the United States from these municipalities is expected to be extremely small.

No fruit was imported into the United States from Guaymas before July 1988 (the effective date of the prohibitions on the importation of fruit from that

municipality), and we are aware of no planned fruit shipments from that municipality.

Oranges and grapefruit appear to be the only fruit likely to be imported into the United States from Empalme. Oranges and grapefruit were the only fruit imported from Empalme in 1988, the last full calendar year before we placed prohibitions on the importation of fruit from Empalme (the prohibitions became effective in March 1989). During 1988, the amount of oranges and grapefruit imported into the United States from Empalme amounted to less than 1 percent of the total United States production of these fruits, and less than 1 percent of total United States imports of these fruits. Empalme is not a major production area for citrus. We therefore believe that orange and grapefruit imports into the United States from Empalme would resume at 1988 levels.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under Number 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**List of Subjects in 7 CFR Part 319**

Fruits, Imports, Plant diseases and pests, Quarantine.

## PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, 7 CFR part 319 is amended as follows:

1. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c).

**§ 319.56–2 [Amended]**

2. In § 319.56–2, paragraph (h) is amended by adding "Empalme; Guaymas;" immediately after "Carbo;".

Done in Washington, DC, this 11th day of March 1991.

**James W. Glosser,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 91–6073 Filed 3–13–91; 8:45 am]

BILLING CODE 3410–34–M

## Agricultural Marketing Service

## 7 CFR Part 905

**[Docket No. FV–90–202IR]**

## Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Relaxation of Grade and Size Requirements

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule temporarily relaxes the minimum grade requirement for domestic and export shipments of red seedless grapefruit to U.S. No. 2 from Improved No. 2, and the minimum size requirement for domestic shipments of white seedless grapefruit (seedless grapefruit, except red seedless grapefruit) to 3$^{5}/_{16}$ inches in diameter from 3$^{9}/_{16}$ inches in diameter. The relaxation for Florida grapefruit is based on the current and prospective crop and market demand conditions and maturity level and size composition of the remaining 1990–91 Florida grapefruit crop.

**DATES:** The amendments for "red seedless grapefruit" are effective March 11, 1991, and the amendments for "seedless, except red grapefruit" are effective April 15, 1991. Comments which are received by April 15, 1991 will be considered prior to issuance of any final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3918.

**SUPPLEMENTARY INFORMATION:** This interim final rule is issued under Marketing Agreement and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 90 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida, and about 12,000 producers of these citrus fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and a majority of the producers and a majority of importers may be classified as small entities.

The Citrus Administrative Committee (CAC), which administers the order locally, met January 29, 1991, and unanimously recommended the grade and size relaxations. The relaxations are based on the CAC's assessment of the current crop conditions and the remaining available supply of marketable grapefruit. The CAC meets prior to and during each season to review the handling requirements, effective on a continuous basis, for each regulated citrus fruit. CAC meetings

generally are open to the public, and interested persons may express their views at these meetings. The U.S. Department of Agriculture (Department) reviews CAC recommendations and information submitted by the CAC and other available information and determines whether modification, suspension, or termination of the handling requirements would tend to effectuate the declared policy of the Act.

An interim final rule was issued October 19, 1990 (55 FR 42843, October 24, 1990). That rule amended § 905.306 (7 CFR 905.306). Section 905.306 specifies minimum grade and size requirements for Florida citrus. Minimum grade and size requirements for domestic shipments of Florida citrus are specified in that section in Table I of paragraph (a) and for export shipments in Table II of paragraph (b). That interim final rule, among other things, relaxed the minimum size requirement for domestic shipments of red seedless grapefruit to size 56 (3 5/16 inches in diameter) for the period October 22, 1990 through October 20, 1991. In the absence of that action, the minimum size requirement would have increased to size 48 (3 9/16 inches in diameter). That interim final rule also similarly relaxed the requirements for grapefruit imported into the United States pursuant to section 8e of the Act (7 U.S.C. section 608e–1).

This action relaxes the minimum external quality requirement for domestic and export shipments of red seedless grapefruit to U.S. No. 2 grade from Improved No. 2 grade for the period March 11, 1991, through August 18, 1991, and the minimum size requirement for domestic shipments of white seedless grapefruit to size 56 (3 5/16 inches in diameter) from size 48 (3 9/16 inches in diameter) for the period April 15, 1991, through August 18, 1991. At the same time, the grapefruit import requirements specified in § 944.106 (7 CFR 944.106) will be temporarily suspended beginning March 11, 1991 in a separate action also published in this issue of the **Federal Register**.

The CAC recommended this action based on analysis of the grade and size composition of this season's remaining Florida grapefruit crop. Relaxing the minimum grade requirement for red seedless grapefruit on March 11, 1991, is expected to make additional fruit of acceptable quality available, since the grade relaxation pertains only to external quality of the fruit, and it does not change the internal requirements. Under the grade relaxation, the fruit will be required to meet the requirements of U.S. No. 2 grade rather than U.S. No. 1 grade relating to shape (form) and color. The requirements are set forth in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.750–51.784). Relaxing the minimum size for white seedless grapefruit to 3 5/16 inches in diameter on April 15, 1991, is expected to make smaller fruit available which is of acceptable quality, maturity, and flavor to receive consumer acceptance. This action is expected to maximize shipments to fresh market channels. The Florida grapefruit shipping season normally begins in September and continues through the following August.

Under this marketing order, handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day, and up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

This action reflects the CAC's and the Department's appraisal of the need to relax the grade and size requirements as hereinafter set forth. The Department's view is that this action will have a beneficial impact on producers and handlers since it would allow Florida citrus handlers to ship those grades and sizes of fruit available to meet consumer needs consistent with this season's crop and market conditions.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the CAC, and other information, it is found that the relaxation set forth below will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes grade and size requirements currently in effect for Florida grapefruit; (2) Florida grapefruit handlers are aware of this action which was recommended by the CAC at a public meeting and they will need no additional time to comply with the relaxed requirements; (3) shipment of the 1990–91 season Florida grapefruit crop is currently in progress, and (4) this rule provides a 30-day comment period, and any comments received will be considered prior to issuance of a final rule.

**List of Subjects in 7 CFR Part 905**

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

## PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 905.306 is amended as follows:

A. In paragraph (a), Table I, the entries for "seedless, red grapefruit" and "seedless, except red grapefruit" are revised to read as set forth below.

B. In paragraph (b), Table II, the entries for "seedless, red grapefruit" are revised to read as follows:

**Note:** This section will appear in the annual Code of Federal Regulations.

**Section 905.306 Orange, Grapefruit, Tangerine and Tangelo Regulation 6.**

(a) * * *

TABLE I

| Variety | Regulation period | Minimum grade | Minimum diameter (inches) |
|---|---|---|---|
| (1) | (2) | (3) | (4) |
| * * * * * * * | | | |
| Grapefruit: | | | |
| * * * * * * * | | | |
| Seedless, red | 03/11/91-08/18/91 | U.S. No. 2 (External) U.S. No. 1 (Internal) | 3 9/16 |
| Seedless, red | 08/19/91-10/20/91 | Improved No. 2 (External) U.S. No. 1 (Internal) | 3 9/16 |
| | On and after 10/21/91 | Improved No. 2 (External) U.S. No. 1 (Internal) | 3 9/16 |
| Seedless, except red | 04/15/91-08/18/91 | Improved No. 2 (External) U.S. No. 1 (Internal) | 3 9/16 |
| | On and after 08/19/91 | Improved No. 2 (External) U.S. No. 1 (Internal) | 3 9/16 |
| * * * * * * * | | | |

(b) * * *

TABLE II

| Variety | Regulation period | Minimum grade | Minimum diameter (inches) |
|---|---|---|---|
| (1) | (2) | (3) | (4) |
| * * * * * * * | | | |
| Grapefruit: | | | |
| * * * * * * * | | | |
| Seedless, red | 03/11/91-08/18/91 | U.S. No. 2 (External) U.S. No. 1 (Internal) | 3 9/16 |
| | On and after 08/19/91 | Improved No. 2 (External) U.S. No. 1 (Internal) | 3 9/16 |
| * * * * * * * | | | |

Dated: March 8, 1991.

**Charles S. Brader,**

*Director, Fruit and Vegetable Division.*

[FR Doc. 91-6075 Filed 3-12-91; 8:45 am]

BILLING CODE 3410-02-M

## 7 CFR Part 944

**[Docket No. FV-91-259FR]**

## Fruits; Import Regulations

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule temporarily suspends requirements for grapefruit imported into the United States. The suspension is necessary to provide the U.S. Trade Representative (USTR) adequate time to review changes in the grapefruit import requirements. Grapefruit import requirements are effective under section 8e of the Agricultural Marketing Agreement Act of 1937 (Act).

**EFFECTIVE DATE:** March 11, 1991.

**FOR FURTHER INFORMATION CONTACT:** Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3918.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under section 8e (17 U.S.C. section 608e-1) of the Agricultural Marketing Agreement Act of 1937, as amended (17 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Import regulations issued under the Act are based on those established under Federal marketing orders. Thus, this action should also have small entity orientation, and impact on both small and large business entities in a manner comparable to rules issued under such marketing orders. There are about 25 importers of grapefruit. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $3,500,000. A majority of these importers may be classified as small entities.

Section 8e of the Act provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities. Section 8e also provides that whenever two or more marketing orders regulate the same commodity produced in different areas of the United States, the Secretary shall determine which area the imported commodity is in most direct competition with and apply the regulations for that area to the imported commodity. The Secretary has determined that grapefruit imported into the United States is in

most direct competition with grapefruit grown in Florida regulated under M.O. 905, and has found that the minimum grade and size requirements for imported grapefruit shall be the same as those established for grapefruit under M.O. 905.

The Citrus Administrative Committee (CAC) recommended relaxations in the grade and size requirements for shipments of certain types of grapefruit grown in Florida to become effective March 11, 1991. This is intended to assure that fresh market requirements are supplied with the best quality fruit available in order to encourage demand. The Department has reviewed the CAC's recommendation and has determined that the relaxations should be made effective. This action is contained in a separate document.

Section 944.106 (7 CFR 944.106) currently specifies that grapefruit imported into the United States must meet the same minimum grade and size requirements specified in § 905.306 (7 CFR 905.306) for grapefruit grown in Florida. However, a provision in the Food, Agriculture, Conservation, and Trade Act of 1990 amended section 8e to require the Secretary of Agriculture to notify the USTR prior to implementing or modifying import regulations to ensure that they are consistent with trade agreements in effect. The USTR is required to provide advice to the Secretary within 60 days. Since there is not enough time for the USTR to complete a review by March 11, 1991, it is necessary to temporarily suspend the grapefruit import requirements in § 944.106, so that relaxations for Florida grapefruit can be made effective by March 11, 1991. Accordingly, the grapefruit import requirements in § 944.106 would be temporarily suspended beginning March 11, 1991.

This final rule reflects the Department's appraisal of the need to suspend the grapefruit import regulation, as hereinafter set forth, and is in accordance with the Act.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This temporary action suspends grade and size requirements currently in effect for imported grapefruit; (2) the suspension needs to be made effective by March 11, 1991, so that grade and size requirements can be made effective by that date for certain types of Florida grapefruit; and (3) no useful purpose would be served by delaying the effective date until 30 days after publication.

**List of Subjects in 7 CFR Part 944**

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR part 944 is amended as follows:

## PART 944—FRUITS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 944 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. The provisions of § 944.106 (7 CFR 944.106) are hereby temporarily suspended beginning March 11, 1991.

**Note:** This section will not appear in the annual Code of Federal Regulations.

Dated: March 8, 1991.

**Charles R. Brader,**

*Director, Fruit and Vegetable Division.*

[FR Doc. 91–6074 Filed 3–13–91; 8:45 am]

BILLING CODE 3410–02–M

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**7 CFR Part 981**

**[FV–91–217FR]**

## Handling of Almonds Grown in California; Extension of Date for Satisfying Reserve Disposition Obligation

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule extends from September 1, 1991 to December 31, 1991, the date by which handlers of California almonds must satisfy their 1990–91 crop year reserve disposition obligation. This action is needed in order to provide ample time for handlers to sell reserve almonds in authorized reserve outlets. This action is based on a unanimous recommendation of the Almond Board of California (Board), which is responsible for local administration of the order, and other available information.

**EFFECTIVE DATE:** April 15, 1991.

**FOR FURTHER INFORMATION CONTACT:** Sheila Young, Marketing Specialist, MOAB, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20009–6456; telephone: (202) 475–5992.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement and Order No. 981 (7 CFR part 981), as amended, regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action of small entities.

The purpose of RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statues have small entity orientation and compatibility.

There are approximately 100 handlers of almonds who are subject to regulation under the almond marketing order and approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less then $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This action gives handlers of California almonds an additional four months to satisfy their 1990–91 crop year reserve disposition obligations. This action relaxes restrictions on almond handlers and will not impose any additional burden or costs on handlers.

On September 21, 1990, a final rule was published in the **Federal Register** (55 FR 38793) which requires handlers of California almonds to withhold, as a reserve, from normal domestic and export markets, 35 percent of merchantable almonds received from

growers during the 1990–91 crop year. The remaining 65 percent (the salable percentage) of the crop may be sold by handlers in any market. The crop year for regulating almonds grown in California is from July 1 through the following June 30.

Section 981.66(e) of the order provides that all reserve almonds which remain unsold as of September 1 of the next crop year shall be disposed of by the Board as soon as practicable through the most readily available reserve outlets. The date of September 1 may be extended to a later date by the Secretary, upon recommendation of the Board or other information.

In a mail vote completed on October 19, 1990, the Board unanimously recommended to extend the reserve disposition date to December 31, 1991, for the 1990–91 crop year only. This action is an effort on the part of the Board to give handlers additional time to dispose of their reserve almonds.

The Board recommended extending the reserve disposition date by four months since the agency agreement under which handlers dispose of reserve almonds was not available to handlers until roughly four months after the beginning of the crop year. Extending the date by which handlers must dispose of their reserve almonds imposes no additional burdens on such handlers. Therefore, under this action handlers who find it profitable to dispose of such reserve almonds prior to December 31, 1991, can do so.

Notice of this action was published in the **Federal Register** on December 26, 1990 (55 FR 52999). Written comments from interested persons were invited through January 25, 1991. One comment was received in support of this final action.

Mr. Steve Easter, representing Blue Diamond Growers (Blue Diamond), commented that this action was unanimously supported by the Board and that it relaxes restrictions on handlers with no additional burden or costs on handlers. In addition, Blue Diamond stated that handlers need ample time to research, develop and implement their marketing and sales plans in order to sell almonds in the developing almond reserve outlets.

Based on the above, the Administrator of the AMS has determined that issuance of this final rule will not have a significant economic effect on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the Board, and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 981**

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

## PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

### Subpart—Administrative Rules and Regulations

2. Section 981.467 is amended by adding a new paragraph (c) to read as follows:

**§ 981.467 Disposition in reserve outlets by handlers.**

* * * * *

(c) For the 1990–91 crop year only, any reserve almonds remaining unsold as of December 31, 1991, shall be disposed of by the Board as soon as practicable through the most readily available reserve outlets.

Dated: March 8, 1991.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 91–5989 Filed 3–13–91; 8:45 am]

BILLING CODE 3410–02–M

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**7 CFR Part 985**

**[FV–91–213 FR]**

## Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 1991–92 Marketing Year

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 1991–92 marketing year, which begins on June 1, 1991. This action is taken under the marketing order for spearmint oil produced in the Far West in order to avoid extreme fluctuations in supplies and prices and thus help to maintain stability in the spearmint oil market. This action was unanimously recommended by the Spearmint Oil Administrative Committee (Committee), which is responsible for local administration of the order.

**EFFECTIVE DATE:** April 15, 1991.

**FOR FURTHER INFORMATION CONTACT:** Sheila A. Young, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–5992.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement and Order No. 985, as amended (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in the Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

The Far West spearmint oil industry is characterized by primarily small producers whose farming operations generally involve more than one commodity and whose income from farming operations is not exclusively dependent on the production of spearmint oil. The production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered under the marketing order). Spearmint oil is also produced in the Midwest. The production area covered by the marketing order normally accounts for more than 75 percent of U.S. annual production of spearmint oil.

The Committee reports that there are approximately 9 handlers and 253 producers of spearmint oil under the marketing order for spearmint oil produced in the Far West. Of the 253 producers, 160 producers hold "Class 1" (Scotch) oil allotment base, and 136

producers hold "Class 3" (Native) oil allotment base.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.1) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose average gross annual receipts are less than $3,500,000. The majority of Far West spearmint oil producers and handlers may be classified as small entities.

This action establishes a new § 985.210 and is based on recommendations of the Committee and other information.

This final rule establishes salable quantities of 1,010,943 pounds and 1,117,648 pounds, respectively, for Scotch and Native spearmint oils produced in the Far West and an allotment percentage of 59 percent both for Scotch and Native spearmint oils produced in the Far West. This action limits the amount of spearmint oil that may be purchased from or handled for producers by handlers, during the 1991–92 marketing year, which begins on June 1, 1991. Such salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980. The amounts recommended for sale reflect moderate and steady increases in trade demand for both Scotch and Native spearmint oil over the past four years. Information available to the Committee indicates that additional increases in trade demand are likely in the 1991–92 marketing year. The salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market needs up to 150,000 pounds which may develop for Native spearmint oil can be satisfied by an increase in the salable quantity which producers can fill with reserve stocks. For Scotch oil, reserve stocks are depleted. However, both Scotch and Native spearmint oil producers who produce more than their annual allotments during the 1991–92 season may transfer such excess spearmint oil to a producer with spearmint oil production less than his or her annual allotment.

This regulation is similar to those which have been issued in prior seasons. Costs to producers and handlers resulting from this action are expected to be offset by the benefits derived from improved returns.

The salable quantities and allotment percentages were unanimously recommended by the Committee at its October 16, 1990, meeting.

The salable quantity and allotment percentage for each class of spearmint oil for the 1991–92 marketing year, which begins on June 1, 1991, is based upon recommendations of the Committee and the following data and estimates.

(1) "Class 1" (Scotch) Spearmint Oil

(A) Estimated carryin on June 1, 1991—0 pounds.

(B) Estimated trade demand (domestic and export) for the 1991–92 marketing year—1,000,000 pounds.

(C) Recommended desirable carryout on May 31, 1991—0 pounds.

(D) Salable quantity required from 1991 regulated production—1,000,000 pounds.

(E) Total allotment bases for Scotch oil for the 1991–92 marketing year—1,713,463 pounds.

(F) Computed allotment percentage—58.4 percent.

(G) Recommended allotment percentage—59 percent.

(H) The Committee's recommended salable quantity—1,010,943 pounds.

(2) "Class 3" (Native) Spearmint Oil

(A) Estimated carryin on June 1, 1991—57,210 pounds.

(B) Estimated trade demand (domestic and export) for the 1991–92 marketing year—1,150,000 pounds.

(C) Recommended desirable carryout on May 31, 1992—0 pounds.

(D) Salable quantity required from 1991 production—1,092,790 pounds.

(E) Total allotment bases for Native oil—1,894,319 pounds.

(F) Computed allotment percentage—57.7 percent.

(G) Recommended allotment percentage—59 percent.

(H) The Committee's recommended salable quantity—1,117,648 pounds.

The salable quantity is the total quantity of each class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The establishment of these salable quantities and allotment percentages will allow for anticipated market needs based on historical sales, changes and trends in production and demand, and information available to the Committee.

Notice of the proposal to establish the salable quantity and allotment percentage for each class of oil was published in the December 18, 1990, issue of the **Federal Register** (55 FR 51911). Comments on the proposed rule were solicited from interested persons until February 1, 1991. No comments were received. The salable quantities and allotment percentages established by this final rule are identical to those contained in the proposed rule.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the Committee's recommendations and other available information, it is found that the regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 985**

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, and Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

## PART 985—SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Add a new § 985.210 under Subpart—Salable Quantities and Allotment Percentages to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

### Subpart—Salable Quantities and Allotment Percentages

**§ 985.210 Salable quantities and allotment percentages—1991–92 marketing year.**

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year which begins on June 1, 1991, shall be as follows:

(a) *Class 1* (Scotch) oil—a salable quantity of 1,010,943 pounds and an allotment percentage of 59 percent.

(b) *Class 3* (Native) oil—a salable quantity of 1,117,648 pounds and an allotment percentage of 59 percent.

Dated: March 8, 1991.

Robert C. Keeney,

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 91–5990 Filed 3–13–91; 8:45 am]

BILLING CODE 3410–02–M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 91-NM-40-AD; Amdt. 39-6939]**

## Airworthiness Directives; Aerospatiale Caravelle SE 210 Models I, III, and VIR Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all Aerospatiale Caravelle SE 210 Models I, III, and VIR series airplanes, which requires repetitive ultrasonic inspections to detect damaged main landing gear (MLG) front hinge bearings, and repair, if necessary. This amendment is prompted by a report of a left MLG collapsing due to failed bearings. This condition, if not corrected, could result in further instances of collapse of the MLG and consequent structural damage to the airplane.

**EFFECTIVE DATE:** April 1, 1991.

**ADDRESSES:** The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all Aerospatiale Caravelle SE 210 Models I, III, and VIR series airplanes. There has been a recent report of a left main landing gear (MLG) collapsing on a Caravelle Models III (Mark 10B3) airplane due to failure of the hinge beam bearings. These same hinge beam bearings are installed on all Caravelle SE 210 Models I, III, and VIR series airplanes. This condition, if not corrected, could result in further instances of collapse of the MLG and consequent structural damage to the airplane.

Messier-Hispano-Bugatti has issued Caravelle Service Bulletin 32-083, Revision 4, dated November 28, 1990, which describes procedures to perform repetitive ultrasonic inspections to detect defects in the MLG front hinge beam bearings, and repair, if necessary. The French DGAC has classified this service bulletin as mandatory, and has issued French Airworthiness Directive 90-239-071(B) addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires repetitive ultrasonic inspections to detect defects in the MLG front hinge beam bearings, and repair, if necessary, in accordance with the service bulletin previously described. The AD also specifies sections of the Aerospatiale Overhaul Manual, Repair Document HS RA20017, and Aeroservice Section 1, No. 82, for additional service information sources.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

### List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Aerospatiale (Formerly SUD-Service/SUD Aviation):** Applies to all Caravelle SE 210 Model I, III, and VIR series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent collapse of the main landing gear (MLG) and consequent structural damage to the airplane, accomplish the following:

A. Prior to the accumulation of 50 landings after the effective date of this AD, or within 30 days after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 2,500 landings, perform an ultrasonic inspection of the front hinge beam upper bearings on each MLG, in accordance with Figure 2 on page 18 of Messier-Hispano-Bugatti Service Bulletin 32-083, Revision 4, dated November 28, 1990.

B. If defects are found as a result of the inspections required by paragraph A. of this AD, which are outside the limits specified in Messier-Hispano-Bugatti Service Bulletin 32-083, Revision 4, dated November 28, 1990, prior to further flight, remove the damaged MLG and perform an ultrasonic inspection of the hinge beam, an eddy current inspection following removal of the bushings, and a complete geometric check of the MLG, in accordance with the service bulletin.

1. MLG's which have been reconditioned in accordance with these procedures may only be returned to service provided that no defects are found.

2. If defects are found, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, or replace affected part with a serviceable part of same part number.

C. If no defects are found as a result of the inspections required by paragraph A. of this AD, and the MLG components have been

overhauled, prior to further flight, accomplish the following:

1. Assemble in accordance with Overhaul Manual 32-1-61.

2. Accomplish geometric adjustment in accordance with Repair Document HS RA20017.

3. Accomplish eccentric adjustment in accordance with Repair Document HS RA20017 or Aeroservice section 1, No. 82.

4. Repeat the inspection required by paragraph A. of this AD prior to the accumulation of 2,500 landings and thereafter at intervals not to exceed 2,500 landings.

D. If no defects are found as a result of the inspections required by paragraph A. of this AD, and the MLG components have not been subjected to the procedures identified in paragraphs C.1., C.2., and C.3. of this AD during the last overhaul, repeat the inspection required by paragraph A. of this AD at intervals not to exceed 50 landings until next overhaul, including a complete ultrasonic inspection of the hinge beam, an eddy current inspection following removal of bushes, and a complete geometric check of the MLG.

1. MLG's which have been inspected in accordance with this procedure may only be returned to service provided that no defects are found.

2. If defects are found, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, or replace affected part with serviceable part of same part number.

3. Following overhaul of the MLG componenta, repeat the inspection required by paragraph A. of this AD at intervals not to exceed 2,500 landings.

E. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective April 1, 1991.

Issued in Renton, Washington, on March 6, 1991.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 91-6066 Filed 3-13-91; 8:45 am]

BILLING CODE 4910-13-M

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## 14 CFR Part 39

**[Docket No. 90-NM-229-AD; Amdt. 39-6941]**

## Airworthiness Directives; Airbus Industrie Model A300, A310, and A300-600 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300, A310, and A300-600 series airplanes, which requires the identification and removal of faulty hydraulic power fire shut-off valves and replacement with modified valves. This amendment is prompted by reports of inoperative hydraulic power fire shut-off valves discovered during aircraft production tests. This condition, if not corrected, could result in the inability to close the fire shut-off valves in the event of a fire.

**EFFECTIVE DATE:** April 22, 1991.

**ADDRESSES:** The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Airbus Industrie Model A300, A310, and A300-600 series airplanes, which requires the identification and removal of faulty hydraulic power fire shut-off valves and replacement with modified valves, if necessary, was published in the **Federal Register** on November 6, 1990 (55 FR 466753).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters supported the rule. However, one commenter stated that the French Airworthiness Directive cited in the preamble to the notice as "90-042-104(B)" should read "90-042-107(B)" to rectify a previous sequential error in the numbering system. The FAA notes this correction.

The other commenter requested that the description of the unsafe condition be clarified; the commenter stated that the failure of the valve to close does not lead to the hydraulic powered system being lost, but results in the engine pump suction not being isolated in the event of a fire. The FAA agrees that the suggested wording provides a clear understanding of the nature of the addressed problem, and has modified the description of the unsafe condition accordingly.

Both comments received are merely clarifying in nature and do not affect the rule itself.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 113 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8.5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The modified hydraulic power fire shut-off valves will be supplied to the operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $38,420.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows;

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Airbus Industrie:** Applies to all Model A300, A310, and A300-600 series airplanes, on which Airbus Industrie Modification 8135 has not been accomplished, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent the inability of the hydraulic power fire shut-off valves to close during emergency conditions, accomplish the following:

A. Within 180 days after the effective date of this AD, conduct an inspection of the hydraulic power fire shut-off valves to identify faulty valves, as specified in Airbus Industrie Service Bulletins A300-29-096 (for Model A300 series airplanes), A310-29-2025 (for Model A310 series airplanes), and A300-29-6017 (for Model A300-600 series airplanes), all dated January 29, 1990. Any faulty valve identified must be removed and replaced with a modified valve prior to further flight, in accordance with the appropriate service bulletin.

Note: The Airbus Industrie service bulletins reference Lucas Air Equipment Service Bulletin No. B38LC15-29-05, Revision 1, dated February 1990, for additional instructions.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective April 22, 1991.

Issued in Renton, Washington, on March 6, 1991.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 91-6062 Filed 3-13-91; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 90-NM-225-AD; Amdt. 39-6940]**

## Airworthiness Directives; Airbus Industrie Model A310-200 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Industrie Model A310-200 series airplanes, which requires repetitive high frequency eddy current (HFEC) rototest inspections to detect cracks in the wing rear spar at certain bolt holes where the main landing gear (MLG) forward pick-up fittings are attached to the rear spar, and repair, if necessary. This amendment is prompted by full-scale fatigue testing by the manufacturer, which revealed cracks in the wing rear spar emanating from certain bolt holes at the attachment of the MLG forward pick-up fitting. This condition, if not corrected, could result in reduced structural integrity of the wings.

**EFFECTIVE DATE:** April 22, 1991.

**ADDRESSES:** The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to all Airbus Industrie Model A310-200 series airplanes, which requires repetitive high frequency eddy current (HFEC) rototest inspections to detect cracks in the wing rear spar at certain bolt holes where the main landing gear (MLG) forward pick-up fittings are attached to the rear spar, and repair, if necessary, was published in the **Federal Register** on November 6, 1990 (55 FR 46672).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supported the rule.

The other commenter supported the rule, but requested that proposed paragraph A.2. be revised to require repair procedures (cold expansion of the bolt holes) to be conducted in accordance with Airbus Service Bulletin A310-57-2049, rather than Service Bulletin A310-57-2046. Airbus Industrie Service Bulletin A310-57-2049, dated April 10, 1990, describes procedures for cold expansion of the holes to improve the rear spar fatigue life; and procedures to replace the light alloy nuts with new steel nuts, at specified positions, to improve clamping and prevent possible fretting. (The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, has not classified this service bulletin as mandatory. However, a parallel French Airworthiness Directive, Number 90-043-105(B)R1 issued on May 2, 1990, does allow the cold expansion of the holes to be accomplished in accordance with either service bulletin.)

The FAA partially concurs with this commenter's request. Both service bulletins provide repair procedures related to cold expansion of the bolt holes; however, Service Bulletin A310-57-2049 only provides procedures for cold expansion of the holes where no cracks are found. The inspection procedures are addressed only in Service Bulletin A310-57-2046. Paragraph A.2. of the final rule has been revised to permit repair in accordance with either service bulletin. The repetitive inspections, however, are still required at the same interval whether the repair procedures are carried out in accordance with either service bulletin.

After careful review of the available data, including comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above. The FAA has determined

that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD.

It is estimated that 7 airplanes of U.S. registry will be affected by this AD, that it will take approximately 180 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators, is estimated to be $50,400.

The regulations adopted herein will not have substantial direct effects on the States on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Airbus Industrie:** Applies to all Model A310-200 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To detect cracks in the wing rear spar and prevent reduced structural integrity of the wings, accomplish the following:

A. Prior to the accumulation of 12,000 landings, or within 1,000 landings after the effective date of this AD, whichever occurs later, perform a high frequency eddy current (HFEC) rototest inspection of the wing rear spar at certain bolt holes where the main landing gear (MLG) forward pick-up fittings are attached to the rear spar, in accordance with Airbus Industrie Service Bulletin A310-57-2046, dated March 5, 1990.

1. If no cracks are found at the first inspection and no cold working of the holes concerned is carried out, repeat the HFEC rototest inspection at intervals not to exceed 4,500 landings.

2. If no cracks are found at the first inspection and a spar life extension by cold working of the holes concerned is carried out in accordance with the paragraph 2.3.(1)(b) of the Accomplishment Instructions of the above service bulletin or Airbus Industrie Service Bulletin A310-57-2049, dated April 10, 1990; repeat the HFEC rototest inspection within the next 18,000 landings, and thereafter at intervals not to exceed 12,000 landings.

B. If cracks are found, repair prior to further flight, in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Repeat the HFEC rototest inspection at an interval approved by the Manager, Standardization Branch, ANM-113.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

**Note:** The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Line Avenue SW., Renton, Washington.

This amendment becomes effective April 22, 1991.

Issued in Renton, Washington, on March 6, 1991.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 91-6063 Filed 3-13-91; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

**[Docket No. 90-NM-164-AD; Amdt. 39-6931]**

## Airworthiness Directives; Boeing Model 747-400 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747-400 series airplanes, which requires modification of the electronic flight instrument system (EFIS) control panel. This amendment is prompted by reports of electrical failure within this panel, resulting in smoke in the flight deck. This condition, if not corrected, could result in loss of primary control of either pilot's attitude and navigation displays, with concurrent emission of smoke from the pilot's glare shield.

**EFFECTIVE DATE:** April 15, 1991.

**ADDRESSES:** The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124; and Collins Air Transport Division/Rockwell International, 400 Collins Road NE., Cedar Rapids, Iowa 52406. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth J. Schroer, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2795. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 747-400 series airplanes, which requires modification of the EFIS control panel, was published in the **Federal Register** on October 10, 1990 (55 FR 41198). Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter expressed concern that the proposed 30 day compliance period would not allow sufficient time to modify all of the commenter's subject control panels. The vendor had advised that a 30 to 35 day turnaround time would be required for retrofit. The

commenter requested that the compliance time be extended to 180 days. The FAA agrees that the compliance time can be extended somewhat. Inquiry by the FAA as to the present modification status and the ability of the vendor to support the existing airplane fleet has substantiated the commenter's concern that compliance cannot be accomplished within 30 days. In addition, approximately 50% of the panels delivered with the improper components have been modified. After considering this information, the FAA has determined that the compliance time may be extended to 90 days without adversely impacting safety. The final rule has been changed accordingly.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously noted. The FAA has determined that this change will neither increase the economic burden on any operator, nor increase the scope of the AD.

There are approximately 77 Model 747–400 series airplanes of the affected design in the worldwide fleet. It is estimated that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Required modification parts will be provided by Collins at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $800.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Applies to Model 747–400 series airplanes through line number 791, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the failure of either pilot's electronic flight instrument system (EFIS) control panel, with resultant smoke in the flight deck, accomplish the following:

A. Within 90 days after the effective date of this AD, inspect both EFIS control panels installed on the airplane and record the serial number and modification status. Control Panels with serial numbers identified in Collins Service Bulletin DCP–7000–31–04, dated December 1, 1989, and which do not have Modification 4 implemented, must be removed and modified in accordance with the service bulletin before further flight.

B. Any EFIS control panel with a serial number identified in Collins Service Bulletin DCP–7000–31–04, dated December 1, 1989, and which does not have Modification 4 implemented, must be modified in accordance with the service bulletin before installation on an airplane.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

**Note:** The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

D. Special flight permits may be issued in accordance with FARs 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124; and Collins Air Transport Division/Rockwell International, 400 Collins Road NE., Cedar Rapids, Iowa 52406. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective April 15, 1991.

Issued in Renton, Washington, on February 28, 1991.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 91–6057 Filed 3–13–91; 8:45 am]

BILLING CODE 4910–13–M

**14 CFR Part 39**

**[Docket No. 90–NM–194–AD; Amdt. 39–6938]**

## Airworthiness Directives; Boeing Model 757 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which requires periodic inspection, repair, if necessary, and modification of the Number 4 left and right passenger door upper and lower hinge arm leaf springs to ensure proper opening of the door. This amendment is prompted by reports of fractured hinge arm leaf springs. This condition, if not corrected, could result in pieces of the fractured leaf spring jamming the door hinge arm and preventing the door from opening during an emergency evacuation.

**EFFECTIVE DATE:** April 18, 1991.

**ADDRESSES:** The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Pliny Brestel, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S; telephone (206) 227–2783. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to

Boeing Model 757 series airplanes, which requires repetitive inspections of the Number 4 left and right passenger door upper and lower hinge arm leaf springs, and repair, if necessary; and eventual installation of the terminating modification; was published in the **Federal Register** on November 2, 1990 (55 FR 46217).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America, on behalf of it members, requested that the terminating action compliance time be extended from the proposed 18 months to 27 months after the effective date of the AD because 9 months are required to obtain parts from the manufacturer. The FAA does not concur with the request; all kits for terminating action will be available from the manufacturer by April 30, 1991.

One commenter requested that the final rule not restrict the use of new steel leaf springs as a replacement spring, provided that the inspections continue until titanium springs are installed as required for terminating action. The FAA concurs and the final rule has been changed accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 296 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 163 airplanes of U.S. registry will be affected by this AD. It will take approximately 1 manhour to accomplish the inspection and 12 manhours per airplane to accomplish the required modification actions. The average labor cost will be $40 per manhour. Required parts are estimated at $161 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $111,003.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Applies to Model 757 series airplanes listed in Boeing Alert Service Bulletin 757-52A0049, dated July 5, 1990, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure left and right passenger door Number 4 opening when required for emergency use, accomplish the following:

A. Prior to the accumulation of 2,000 flight cycles, or within the next 100 flight cycles after the effective date of this AD, whichever occurs later, inspect the left and right Number 4 passenger door upper and lower hinge arm leaf springs for cracks and fractures, in accordance with Boeing Alert Service Bulletin 757-52A0049, dated July 5, 1990.

B. If cracked or fractured leaf springs are found as a result of the inspection required by paragraph A. of this AD, prior to further flight, accomplish either paragraph B.1. or B.2., below:

1. Replace cracked or fractured leaf springs in accordance with section III. of the service bulletin; or

2. Replace the cracked or fractured leaf springs with new steel leaf springs in accordance with an FAA-approved method, and reinspect those springs prior to the accumulation of an additional 2,000 flight cycles and thereafter at intervals not to exceed 500 flight cycles until the terminating action, required by paragraph D. of this AD, is accomplished.

C. Repeat the inspection required by paragraph A. of this AD at the following intervals.

1. For airplanes with less than 5,000 flight cycles at the time of the last inspection: Accomplish the next inspection within the next 500 flight cycles.

2. For airplanes with 5,000 or more flight cycles at the time of the last inspection: accomplish the next inspection within the next 150 flight cycles.

D. Within the next 18 months after the effective date of this AD, replace the upper and lower hinge arm steel leaf springs with titanium leaf springs for the left and right Number 4 passenger door, in accordance with section III., of Boeing Alert Service Bulletin 757-52A0049, dated July 5, 1990. Such replacement constitutes terminating action for the repetitive inspections required by this AD.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

**Note:** The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective April 18, 1991.

Issued in Renton, Washington, on March 4, 1991.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 91-6065 Filed 3-13-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-258-AD; Amdt. 39-6930]

## Airworthiness Directives; British Aerospace Model ATP Series Airplanes Equipped With Main Wheel Assemblies, Part Number AHA1538 and AHA1663

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model ATP series airplanes, which requires repetitive inspections to detect defects in the main landing gear (MLG) wheel assembly grease retainer seals, and replacement of the seals, if necessary. This amendment is prompted by reports that certain seals can grip the axle or contact the wheel bearing. This condition, if not corrected, could result in seizure of the wheel and subsequent damage to the tire.

**EFFECTIVE DATE:** April 15, 1991.

**ADDRESSES:** The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain British Aerospace Model ATP series airplanes, which requires repetitive inspections to detect defects in the main landing gear (MLG) wheel assembly grease retainer seals, and replacement of the seals, if necessary, was published in the Federal Register on December 11, 1990 (55 FR 50838).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 4 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The required parts will be supplied to the operator at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $160.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**British Aerospace:** Applies to Model ATP series airplanes equipped with main wheel assemblies, Part Number AHA1538 and AHA1663, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent seizure of the main landing gear (MLG) wheel and subsequent damage to the tire, accomplish the following:

A. Within 30 days after the effective date of this AD, and thereafter at each wheel removal, on each wheel of the left and right main landing gear, perform a visual inspection of the wheel hub halves and wheel bearing grease retainer seals, in accordance with British Aerospace Service Bulletin ATP-32-13, Revision 1, dated February 28, 1990.

**Note.**—The British Aerospace service bulletin references Dunlop Limited Service Bulletin 32-1032, Revision 1, dated February 13, 1990, for additional instructions.

1. Measure the diameter of the grease retainer seal locating groove for wear on the brake side half hub.

a. If the diameter of the groove exceeds 4.540 inches, prior to further flight, replace with a serviceable part, in accordance with Dunlop Limited Service Bulletin 32-1032, Revision 1, dated February 13, 1990.

b. If the diameter of the groove does not exceed 4.540 inches, prior to further flight, protect the bore of the hub half with an application of Alocrom, in accordance with the Dunlop Limited service bulletin.

2. Verify that the brake side grease retainer seal, Part Number AH089109, has the cross-section shown in Figure 2 of Dunlop Limited Service Bulletin 32-1032, Revision 1, dated February 13, 1990. If this part's configuration is different (has not been chamfered), prior to further flight, replace it with a modified Part Number AH089109, in accordance with the Dunlop Limited service bulletin.

3. Visually inspect the inner bore and outer circumference of brake side grease retainer seal, Part Number AH089109. If the external circumference and the internal bore of the grease retainer seal, Part Number AH089109, is scored or chipped, prior to further flight, replace it with a serviceable part in accordance with the Dunlop Limited service bulletin.

4. Verify that the valve side grease retainer seal is marked as Part Number AH089720. Prior to further flight, replace any grease retainer seals not marked Part Number AH089720 with one so marked.

5. Visually inspect the valve side grease retainer seal, Part Number AH089720. If the internal bore and the wheel bearing face of the grease retainer seal show signs of wear, prior to further flight, replace all defective grease retainer seals in accordance with the Dunlop Limited service bulletin.

B. Accomplishment of Dunlop Modification C2614, which consists of installing improved grease retainer seals on both the brake side and the valve side half hubs, in accordance with Dunlop Limited Service Bulletin AHA1538/AHA1663-32-1042, dated April 10, 1990, constitutes terminating action for the repetitive inspections required by paragraph A. of this AD.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

**Note:** The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective April 15, 1991.

Issued in Renton, Washington, on February 28, 1991.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 91-6056 Filed 3-13-91; 8:45 am]

BILLING CODE 4910-13-M

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## 14 CFR Part 39

**[Docket No. 90-NM-254-AD; Amdt. 39-6936]**

## Airworthiness Directives; British Aerospace Model ATP Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model ATP series airplanes, which requires repetitive inspections to detect disbonding of the nickel sheath from the leading edge of the propeller blades and repair, if necessary. This amendment is prompted by a report of disbonding of a nickel sheath erosion strip from a propeller blade leading edge. This condition, if not corrected, could result in structural damage to the fuselage and possible injury to personnel on the ground.

**EFFECTIVE DATE:** April 18, 1991.

**ADDRESSES:** The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, 98055-4056.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain British Aerospace Model ATP series airplanes, which requires repetitive inspections to detect disbonding of the nickel sheath from the leading edge of the propeller blades, and repair, if necessary, was published in the **Federal Register** on December 5, 1990 (55 FR 50191).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

It is estimated that 4 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $160.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

### PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**British Aerospace:** Applies to ALL Model ATP series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To detect disbonding of the nickel sheath from the propeller blades, accomplish the following:

A. Within 125 hours time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 125 hours time-in-service, perform a visual inspection of the propeller blades for disbonding of the leading edge nickel sheath, in accordance with British Aerospace Alert Service Bulletin A-ATP-61-5, dated April 4, 1990.

B. If disbonding is found, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM-113, Transport Airplane Directorate.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

**Note:** The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective April 18, 1991.

Issued in Renton, Washington, on March 4, 1991.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate; Aircraft Certification Service.*

[FR Doc. 91-6067 Filed 3-13-91; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

**[Docket No. 90-NM-241-AD; Amdt 39-6937]**

## Airworthiness Directives; British Aerospace Model ATP Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model ATP series airplanes, which requires visual inspections to detect overheat damage in the electrical cable ring tongue terminal tags, and replacement of terminal tags, if necessary. This amendment is prompted by a report of incorrectly crimped connections during production. This condition, if not corrected, could result in the malfunction of electrical equipment, overheat damage or fire, and the loss of electrical power.

**EFFECTIVE DATE:** April 18, 1991.

**ADDRESSES:** The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-9100. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain British Aerospace Model ATP series airplanes, which requires visual inspections to detect overheat damage in the electrical cable ring tongue terminal tags, and replacement of terminal tags, if necessary, was published in the **Federal Register** on November 26, 1990 (55 FR 49069).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the rule, but noted that a minimum time-in-service of 2,000 hours from the initial inspection should be required before a repeat visual inspection of the terminal blocks is accomplished. This is to allow any discoloration from overheating at terminal tags to become clearly identifiable. The FAA concurs. Paragraph C. of the final rule has been revised to clarify that the repeat inspection must be conducted within 2,500 hours, but not less than 2,000 hours, after the initial inspection.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes noted above. This change will neither significantly increase the economic burden on affected operators nor increase the scope of the rule.

It is estimated that one airplane of U.S. registry will be affected by this AD, that it will take approximately 44 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,760.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**British Aerospace:** Applies to Model ATP series airplanes; Serial Numbers 2001 through 2020, inclusive; certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent the malfunction of electrical equipment, overheat damage or fire, and the loss of electrical power, accomplish the following:

A. Within 90 days after the effective date of this AD, inspect the electrical cable ring tongue terminal tags listed in Tables 1 to 21 of British Aerospace Service Bulletin ATP-24-21, Revision 2, dated April 24, 1990, for security and discoloration, in accordance with the service bulletin.

**Note:** The service bulletin and this AD refer to "ring tongue terminal tags." That terminology is used to describe crimp-on wire terminals that have a loop on one end to fit over a terminal stud.

B. If any terminal tag shows signs of being insecurely crimped or is discolored, replace it prior to further flight, in accordance with British Aerospace Service Bulletin ATP-24-21, Revision 2, dated April 24, 1990.

C. Within 2,500 hours time-in-service, but not sooner than 2,000 hours time-in-service, following the inspection required by paragraph A. of this AD, perform a one-time repeat visual inspection on all listed terminal tags that have not been replaced or recrimped, in accordance with British Aerospace Service Bulletin ATP-24-21, Revision 2, dated April 24, 1990.

1. If any terminal tag shows signs of being insecurely crimped or is found discolored, replace it prior to further flight, in accordance with the service bulletin.

2. For those terminal tags which do not show signs of being insecurely crimped or discolored, no further action is required.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

**Note:** The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service

Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective April 18, 1991.

Issued in Renton, Washington, on March 4, 1991.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 91-6068 Filed 3-13-91; 8:45 am]

BILLING CODE 4910-13-M

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## 14 CFR Part 39

**[Docket No. 90-NM-257-AD; Amdt. 39-6935]**

## Airworthiness Directives; British Aerospace Model BAC 1-11 200 and 400 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAC 1-11 200 and 400 series airplanes, which requires various modifications to the rear pressure bulkhead door. This amendment is prompted by reports of recent incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design goal. These conditions, if not corrected, could result in reduced structural integrity of the rear pressure bulkhead door. This action also reflects the FAA's decision that long term continued operational safety should be assured by actual modification of the airframe rather than repetitive inspections.

**EFFECTIVE DATE:** April 18, 1991.

**ADDRESSES:** The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain British Aerospace Model BAC 1-11 200 and 400 series airplanes, which requires various modifications to the rear pressure bulkhead door, was published in the **Federal Register** on December 7, 1990 (55 FR 50563).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 70 airplanes of U.S. registry will be affected by this AD, that it will take approximately 240 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The estimated cost for the required parts and modification kit is estimated to be $8,415 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,261,050.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**British Aerospace:** Applies to Model BAC 1-11 200 and 400 series airplanes, as listed in British Aerospace Service Bulletin 52-PM-5970, dated August 16, 1990, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the rear pressure bulkhead door, accomplish the following:

A. Prior to the accumulation of 55,000 landings or within 15 months after the effective date of this AD, whichever occurs later, install horizontal members, various angle bracket assemblies, throat strips, cleats, furnishing bracket assemblies, furnishing angles, stiffeners, and a detachable door panel, in accordance with British Aerospace Service Bulletin 52-PM-5970, dated August 16, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

**Note:** The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Services Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment become effective April 18, 1991.

Issued in Renton, Washington, on March 4, 1991.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 91-6069 Filed 3-13-91; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 361

### Prescription Drugs for Human Use Generally Recognized as Safe and Effective and Not Misbranded: Drugs Used in Research; Editorial Amendment

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending its regulations to reflect a change in the mailing symbol for the office within FDA where Radioactive Drug Research Committees are to submit information. This action will improve the accuracy of the regulations.

**EFFECTIVE DATE:** March 14, 1991.

**FOR FURTHER INFORMATION CONTACT:** Lola E. Batson, Center for Drug Evaluation and Research (HFD–360), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8038.

**SUPPLEMENTARY INFORMATION:** FDA is amending its regulations in 21 CFR 361.1 (c)(3), (c)(4), and (d)(8) to reflect a mailing symbol change for the office within FDA where Radioactive Drug Research Committees are to submit information.

The amendment is wholly editorial in nature. For this reason, FDA finds that public procedure and delayed effective date are unnecessary (5 U.S.C. 553 (b)(3)(B) and (d)).

#### List of Subjects in 21 CFR Part 361

Medical research, Prescription drugs, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 361 is amended as follows:

### PART 361—PRESCRIPTION DRUGS FOR HUMAN USE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED: DRUGS USED IN RESEARCH

1. The authority citation for 21 CFR part 361 continues to read as follows:

**Authority:** Secs. 201, 501, 502, 503, 505, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 371); sec. 351 of the Public Health Service Act (42 U.S.C. 262).

**§ 361.1 [Amended].**

2. Section 361.1 *Radioactive drugs for certain research uses* is amended in paragraphs (c)(3), (c)(4), and (d)(8) by removing "HFD–150" and replacing it with "HFD–160".

Dated: March 7, 1991.

**Alan L. Hoeting,**

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 91–6036 Filed 3–13–91; 8:45 am]

BILLING CODE 4160–01–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### 25 CFR Part 61

**RIN 1076–AC21**

### Preparation of Rolls of Indians

Dated: February 19, 1991.

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Final rule, correction.

**SUMMARY:** This document corrects the Public Law number appearing in the final rule amending part 61 published in the **Federal Register** on Friday, October 12, 1990, 55 FR 41516. The membership roll of the Coquille Tribe of Indians is being prepared pursuant to section 7 of the Coquille Restoration Act of June 28, 1989, Public Law 101–42. In paragraph 61.4(j)(1) of the final rule, the Public Law number was erroneously cited as 100–139. The Public Law should read Public Law 101–42. No other corrections are being made to the final rule document.

**EFFECTIVE DATE:** November 13, 1990.

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Siletz Agency, Bureau of Indian Affairs, P.O. Box 539, Siletz, Oregon 97380, telephone number: (503) 444–2679.

**Stanley M. Speaks,**

*Acting Assistant Secretary—Indian Affairs.*

[FR Doc. 91–6090 Filed 3–13–91; 8:45 am]

BILLING CODE 4310–02–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Parts 435, 436, and 440

**[MB–15–F]**

**RIN 0938–AD 15**

### Medicaid; Eligibility of Aliens for Medicaid

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Technical amendments.

**SUMMARY:** This document makes technical corrections to final regulations regarding eligibility of aliens for Medicaid published on September 7, 1990, at 55 FR 36813.

**EFFECTIVE DATE:** These amendments are effective as of October 9, 1990, the effective date of the final rule that contained the errors.

**FOR FURTHER INFORMATION CONTACT:** Gwendolyn A. Lindsay (301) 966–4673.

**SUPPLEMENTARY INFORMATION:** Final regulations published on September 7, 1990, at 55 FR 36813 amended 42 CFR parts 435, 436, and 440 to revise Medicaid rules applicable to aliens who meet eligibility requirements as categorically needy or medically needy. In the final regulations, we—

1. Made several technical errors;

2. Unintentionally in 42 CFR 440.255 (b)(1) and (c)(1) did not make the definition of emergency medical condition consistent with the description of the change to the definition in the preamble; and

3. Unintentionally in 42 CFR 435.408(a)(13) and 436.408(a)(13) did not make the types of documents acceptable as proof in establishing entry and continuous residence of an alien consistent with the description in the preamble.

This document corrects those errors by amending §§ 435.406, 435.408(a)(13), 436.408(a)(13), 440.210, 440.220, and 440.255.

In order to ensure clear understanding of Medicaid policy applicable to aliens who meet eligibility requirements as categorically needy or medically needy we are making the following changes:

1. Amending § 435.406(a)(2) to replace the phrase "in § 435.406" with the phrase "in § 435.408."

2. Amending §§ 435.408(a)(13) and 436.408(a)(13) to make the types of documents acceptable as proof in

establishing entry and continuous residence of an alien consistent with the description in the preamble published in the final regulations on September 7, 1990 at 55 FR 36813.

3. Amending §§ 440.210 (b) and (c), and §§ 440.220 (b) and (c) to replace the phrase "this subpart" with the phrase "this subchapter."

4. Revising §§ 440.255 (b)(1) and (c)(1) to make the definition of emergency medical condition consistent with the definition described in the preamble of the final regulations.

**List of Subjects**

*42 CFR Part 435*

Aid to Families with Dependent Children, Grant programs—health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

*42 CFR Part 436*

Aid to Families with Dependent Children, Grant programs—health, Guam, Medicaid Puerto Rico, Supplemental Security Income (SSI), Virgin Islands.

*42 CFR Part 440*

Grant programs—health, Medicaid.

42 CFR chapter IV is amended as set forth below:

## PART 435—[AMENDED]

1. The authority citation for part 435 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

**§ 435.406 [Amended]**

2. In § 435.406(a)(2), the phrase "in § 435.406" is replaced with the phrase "in § 435.408".

**§ 435.408 [Amended]**

3. In § 435.408, paragraph (a)(13) is revised to read as follows:

**§ 435.408 Categories of aliens who are permanently residing in the United States under color of law.**

(a) * * *

(13) Aliens who have entered and continuously resided in the United States since before January 1, 1972 (or any date established by section 249 of the Immigration and Nationality Act, 8 U.S.C. 1259). Ask for any proof establishing this entry and continuous residence;

* * * * *

## PART 436—[AMENDED]

4. The authority citation for part 436 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

5. In § 436.408, paragraph (a)(13) is revised to read as follows:

**§ 436.408 Categories of aliens who are permanently residing in the United States under color of law.**

(a) * * *

(13) Aliens who have entered and continuously resided in the United States since before January 1, 1972 (or any date established by section 249 of the Immigration and Nationality Act, 8 U.S.C. 1259). Ask for any proof establishing this entry and continuous residence;

* * * * *

## PART 440—[AMENDED]

6. The authority citation for part 440 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

**§ 440.210 [Amended]**

7. In § 440.210, paragraphs (b) and (c) the phrase "this subpart" is replaced with the phrase "this subchapter."

**§ 440.220 [Amended]**

8. In § 440.220, paragraphs (b) and (c) the phrase "this subpart" is replaced with the phrase "this subchapter."

9. In § 440.255, paragraphs (a), (b)(1) and (c)(1) are revised to read as follows:

**§ 440.255 Limited services available to certain aliens.**

(a) *FFP for services.* FFP is available for services provided to aliens described in this section which are necessary to treat an emergency medical condition as defined in paragraphs (b)(1) and (c) or services for pregnant women described in paragraph (b)(2).

(b) * * *

(1) Emergency services required after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

(i) Placing the patient's health in serious jeopardy;

(ii) Serious impairment to bodily functions; or

(iii) Serious dysfunction of any bodily organ or part.

* * * * *

(c) * * *

(1) The alien has, after sudden onset, a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

(i) Placing the patient's health in serious jeopardy;

(ii) Serious impairment to bodily functions; or

(iii) Serious dysfunction of any bodily organ or part, and

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.714, Medical Assistance)

Dated: March 5, 1991.

**Neil J. Stillman,**

*Deputy Assistant Secretary for Information Resources Management.*

[FR Doc. 91–5922 Filed 3–13–91; 8:45 am]

BILLING CODE 4120–01–M

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**42 CFR Part 440**

**[MB–014–CN]**

**RIN 0938–AD16**

## Medicaid Program; Eligibility Groups, Coverage, and Conditions of Eligibility; Legislative Changes Under OBRA '87, COBRA, and TEFRA

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Final rule; Correction notice.

**SUMMARY:** This notice corrects 42 CFR 440.210, Required services for the categorically needy, and 42 CFR 440.220, Required services for the medically needy, to restore current text which was inadvertently deleted in the final rule and to make conforming redesignation changes.

**EFFECTIVE DATES:** These corrections are effective November 21, 1990.

**FOR FURTHER INFORMATION CONTACT:** Valerie Krauss (301) 966–4670.

**SUPPLEMENTARY INFORMATION:** On November 21, 1990, in FR Doc. 90–27393, we published a final rule that included revisions to 42 CFR part 440. In doing so, we failed to take into account changes made to part 440 by a final rule published on September 7, 1990 (55 FR 36813). As a result, we inadvertently deleted from the November 21 final rule regulatory text that was added to §§ 440.210 and 440.220 by the September 7 final rule. Consequently, we are publishing this correction notice to integrate the provisions of the two final rules and to restore the deleted text in §§ 440.210 and 440.220. We are also revising § 440.250, Limits on comparability of services, to indicate that paragraph (o) of this section has not yet been established and is therefore reserved.

A. On page 48611, column 1, § 440.210 is correctly revised to read as follows:

(a) A State plan must specify that, as a minimum categorically needy recipients are provided the following services:

(1) The services as specified in §§ 440.10 through 440.50, 440.70 and (to the extent nurse-midwives are authorized to practice under State law or regulation), 440.165;

(2) Pregnancy-related services and services for the other conditions that might complicate the pregnancy

(i) Pregnancy-related services are those services that are necessary for the health of the pregnant woman and fetus, or that have become necessary as a result of the woman having been pregnant. These include, but are not limited to, prenatal care, delivery, postpartum care, and family planning services.

(ii) Services for other conditions that might complicate the pregnancy include those for diagnoses, illnesses, or medical conditions which might threaten the carrying of the fetus to full term or the safe delivery of the fetus; and

(3) For women who, while pregnant, applied for, were eligible for, and received Medicaid services under the plan, all services under the plan that are pregnancy-related for an extended postpartum period. The postpartum period begins on the last day of pregnancy and extends through the end of the month in which the 60-day period following termination of pregnancy ends

(b) A State plan must specify that eligible aliens as defined in §§ 435.406(a) and 436.406(a) of this subchapter will receive at least the services provided in paragraph (a) of this section.

(c) A State plan must specify that aliens not defined in §§ 435.406(a) and 436.406(a) of this subchapter will only be provided the limited services specified in § 440.255.

B. On page 48611, column 2, § 440.220 is correctly revised to read as follows:

**§ 440.220 Required services for the medically needy.**

(a) A State plan that includes the medically needy must specify that the medically needy are provided, as a minimum, the following services:

(1) Prenatal care and delivery services for pregnant women.

(2) Ambulatory services, as defined in the State plan, for—

(i) Individuals under age 18; and

(ii) Individuals entitled to institutional services.

(3) Home health services (§ 440.70) to any individual entitled to skilled nursing facility services.

(4) If the State plan includes services in an institution for mental diseases (§ 440.140 or § 440.160) or in an intermediate care facility for the mentally retarded (§ 440.150(c)) for any group of medically needy, either of the following sets of services to each of the medically needy groups:

(i) The services contained in §§ 440.10 through 440.50 and (to the extent nurse-midwives are authorized to practice under State law or regulation) § 440.165; or

(ii) The services contained in any seven of the sections in §§ 440.10 through 440.165.

(5) For women who, while pregnant, applied for, were eligible as medically needy for, and received Medicaid services under the plan, services under the plan that are pregnancy-related (as defined in § 440.210(a)(2)(i) for an extended postpartum period. The postpartum period begins on the last day of pregnancy and extends through the end of the month in which the 60-day period following termination of pregnancy ends.

(Catalog of Federal Domestic Assistance Program No. 93.714—Medical Assistance Program)

Dated: March 5, 1991.

**Neil J. Stillman,**

*Deputy Assistant Secretary for Information and Resource Management.*

[FR Doc. 91–5923 Filed 3–13–91; 8:45 am]

BILLING CODE 4120–01–M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1180

**[Ex Parte No. 282 (Sub-No. 13)]**

### Removal of Obsolete Regulations Issued Pursuant to Section 213 of the Bankrupt Railroad Service Preservation and Employee Protection Act of 1982

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is removing the regulations that implement section 213 of the Bankrupt Railroad Service Preservation and Employee Protection Act of 1982. These regulations, which are now obsolete, are codified at 49 CFR part 1180, subpart C.

**EFFECTIVE DATE:** This rule is effective on March 14, 1991.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275–7245. TDD for hearing impaired: (202) 275–1721.

**SUPPLEMENTARY INFORMATION:** The regulations codified at 49 CFR part 1180, subpart C (§§ 1180.40–49) implement section 213 of the Bankrupt Railroad Service Preservation and Employee Protection Act of 1982, Public Law 97–468, title II, section 213, Jan. 14, 1983, 96 Stat. 2544 (codified at 45 U.S.C. 915(b)(3)).

Section 213 provided that a financially responsible person, having made an offer to acquire from a carrier subject to liquidation a rail line over which no service was being provided by that carrier, and having had that offer rejected by the bankruptcy trustee, could submit an application to the Commission seeking approval of the proposed acquisition of the line. The railroads which were to be subject to this new acquisition procedure included only those railroads (a) which, on January 14, 1983, were subject to a proceeding pending under section 77 of the old Bankruptcy Act or under subchapter IV of chapter 11 of title 11, United States Code, and (b) which had been ordered by the court to liquidate their properties.

This acquisition procedure was intended to apply to one railroad only: The Chicago, Rock Island and Pacific Railroad Company (the Rock Island). The legislative history of section 213 mentions only the Rock Island in relation to this procedure: "The Rock Island is currently being liquidated, with all its assets being sold. Shippers, other railroads, and government entities, are interested in buying lines of the Rock Island, but feel that the Trustee is not particularly interested in selling lines for continued rail service. They feel he is asking excessive prices and might prefer to sell the lines for scrap." H.R. Rep. No. 97–571, part 1, 97th Cong., 2nd Sess., 18 (1982), reprinted in 1982 U.S. Code Cong. and Adm. News, p. 4494, p. 4500. Section 213 was intended to make applicable to the Rock Island a "forced sale" procedure analogous to the procedures set out in 49 U.S.C. 10905. *See also* the Commission's 1982 Annual Report, at 27–29 (the Rock Island is the only bankrupt railroad described as being in liquidation) and the 1983 Annual Report, at 28 (same description).

The Rock Island has ceased to exist, and the section 213 regulations codified at 49 CFR part 1180, subpart C, have thereby been rendered obsolete. We are therefore removing these obsolete regulations.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

This action will have no significant effect on a substantial number of small entities.

**List of Subjects in 49 CFR Part 1180**

Administrative practice and procedure, Bankruptcy, Railroads,

Reporting and recordkeeping requirements.

Decided: March 7, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

**Sidney L. Strickland, Jr.,**

*Secretary.*

For the reasons set forth in the preamble, title 49, chapter X, part 1180 of the Code of Federal Regulations is amended as follows:

## PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

1. The authority citation for part 1180 continues to read as follows:

**Authority:** 49 U.S.C. 10321, 10505, 10903–10906, 11341, 11343–11346; 5 U.S.C. 553 and 559; 45 U.S.C. 904 and 915.

## PART 1180—[AMENDED]

2. Part 1180 is amended by removing subpart c, §§1180.40 through 1180.49.

[FR Doc. 91–6080 Filed 3–13–91; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Parts 17 and 23

### Policy on Giant Panda Import Permits

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Policy statement.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces a policy for issuance of permits for the import of giant pandas, and will recommence the review and processing of permit applications for the import of giant pandas for temporary exhibition loans. Existing regulations and guidelines are clarified as a result of new information related to situations involving issuance of permits for giant pandas. Specifically, import prohibitions on animals intentionally removed from the wild for exhibition loans will continue. Furthermore, restrictions on the import of other pandas will be imposed as follows: Only female pandas 2 years to under 4 years and males 2 years to under 5 years at the start and conclusion of a loan period, respectively, or animals incapable of reproducing, and those over 18 years old (especially if they are already represented by offspring) would typically be considered for temporary exhibition loans, and then only if funds committed in the loan agreement are used for specific projects designed primarily to enhance the survival of the giant panda. The Service would be supportive of the use of captive animals when the loan or permanent transfer is likely to enhance the captive-breeding population. Furthermore, the basis for findings required by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) on "primarily commercial purposes" and the "suitability of facilities" are clarified and conditioned in this policy.

**DATES:** This policy is effective March 14, 1991. Import permit applications will also receive consideration as of March 14, 1991 in accordance with the permit provisions of 50 CFR Parts 17 and 23.

**ADDRESSES:** Send correspondence to the Office of Scientific Authority, Mail Stop: Arlington Square Building, room 725, U.S. Fish and Wildlife Service, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:**

Scientific Authority Findings—Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (703) 358–1708.

Management Authority Findings—Mr. Marshall P. Jones, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (703) 358–2093.

Permit Issuance—Mr. Richard K. Robinson, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (703) 358–2093.

**SUPPLEMENTARY INFORMATION:**

#### Background

The survival and ultimately the increase of the giant panda (*Ailuropoda melanoleuca*) is the strong desire of the United States, the People's Republic of China (PRC), and the international conservation community.

Since 1983, natural calamities, especially the die-off of certain bamboo populations (the giant panda's principal food), have threatened the survival of the giant panda. The people and the Government of the PRC have undertaken significant efforts to save the panda and to restore its habitat. This has generated interest and support of people and conservation organizations worldwide, and perhaps has also generated the interest in panda loans that are now a point of concern.

There are believed to be fewer than 1,000 giant pandas remaining in the wild. These animals occur in many fragmented populations, only a few of which consist of as many as 50 pandas. Poaching of pandas and loss of their habitat continues. Finally, there are fewer than 100 pandas in captivity, and breeding programs have not yet resulted in a self-sustaining captive population.

On December 6, 1983, the giant panda was placed on appendix III of the Convention at the request of the PRC, on January 23, 1984, the giant panda was listed under the Endangered Species Act (Act) as an endangered species, and on March 14, 1984, it was added to Appendix I of the Convention. The giant panda is subject to strict U.S. and international protection by its listings under the Act and the Convention. The Service is responsible for regulating panda loans to the United States by deciding whether to grant the import, export, and re-export permits required by the Act and the Convention. The Service believes that its existing regulations and guidelines under the Act and the Convention have been sufficient for panda imports and re-export permit decisions made to date. However, in 1987, proposals for temporary exhibition loans of giant pandas became an increasingly controversial issue, and during one period, as many as 30 institutions may have been negotiating with various entities in the People's Republic of China to arrange panda loans, potentially posing additional threats to the wild and captive populations of the species.

Under Article III, paragraph 3 of the Convention, a permit for the import of specimens of Appendix I species may be issued only if certain conditions are met. A Scientific Authority of the State of import must advise that the import will be for purposes which are not detrimental to the survival of the species, and it must be satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it. A Management Authority of the State of import must be satisfied that the specimen is not to be used for primarily commercial purposes.

Issuance of a permit under the Act requires prior determinations that, among other things, the import would be for scientific purposes or to enhance the propagation or survival of the species in a manner consistent with the purposes and policies of the Act, and that issuance of an import permit would not be likely to jeopardize the continued existence of the species.

The Service has already adopted general guidelines that are used by the Scientific Authority to determine whether the purposes of an import would not be detrimental to the survival

of a species in question, but for the giant panda it was felt that more specific guidance was needed. The same was true for determining the suitability of facilities for housing pandas.

Regarding the Management Authority's determination, an applicant for an import permit for wildlife listed in Appendix I of the Convention must demonstrate that the wildlife is not to be used for primarily commercial purposes. The Service therefore must make a specific determination that a loan is not to be for primarily commercial purposes to approve an import of pandas. Furthermore, the fifth meeting of the Conference of the Parties of the Convention recommended (Resolution Con. 5.10) that the following general principles be used by the Parties in assessing whether the importation of a specimen of an Appendix I species would result in its use for "primarily commercial purposes":

1. Trade in Appendix I species must be subject to particular strict regulation and authorized only in exceptional circumstances.

2. An activity can generally be described as "commercial" if its purpose is to obtain economic benefit, including profit (whether in cash or in kind) and is directed toward resale, exchange, provision of a service or other form of economic use or benefit.

3. The term "commercial purposes" should be defined by the country of import as broadly as possible so that any transaction which is not wholly"non-commercial" will be regarded as "commercial". In transposing this principle to the term "primarily commercial purposes", it is agreed that all uses whose non-commercial aspects do not clearly predominate shall be considered to be primarily commercial in nature with the results that the importation of Appendix I specimens should not be permitted. The burden of proof for showing that the intended use of specimens of Appendix I species is clearly non-commercial shall rest with the person or entity seeking to import such specimens.

4. Article III, paragraphs 3(c) and 5(c), of the Convention concern the intended use of the Appendix I specimen in the country of importation, not the nature of the transaction between the owner of the specimen in the country of export and the recipient in the country of import. It can be assumed that a commercial transaction underlies many of the transfers of Appendix I specimens from the country of export to the country of import. This does not automatically mean, however, that the specimen is to be used for "primarily commercial purposes".

The Service has determined that in order to more effectively evaluate permit applications for panda loans, in satisfying the applicable requirements of 50 CFR subchapter B (including, but not limited to, 50 CFR 13.12(a)(9), 17.22(a)(1)(vii), and 23.15(c)(7)), applicants should include in each application a detailed plan for the disposition of all funds expected to be raised during the course of a panda loan. Furthermore, in order to more effectively monitor panda loans, compliance with Service policy, and the non-commercial aspects of said loans, the Service has determined that each institution that receives a panda loan, in satisfying the requirements and conditions of the permit, would likely be required to submit an annual report to the Director in accordance with 50 CFR 13.45. The annual report shall contain a full accounting of all funds raised directly or indirectly by the institution or organization in relation to the loan, the portion of those funds that is in excess of expenses attributable to the loan, and the uses to which those funds have been or will be put, in accordance with the plan submitted previously to the Service.

The Service has evaluated new information as it relates to existing regulations and guidelines to ensure that its permitting actions continue to meet required issuance criteria. The Service announced the initiation of this evaluation in the June 24, 1988 **Federal Register** (53 FR 23847), and in the same document announced that the review and processing of permit applications for the import of giant pandas for temporary exhibition loans was temporarily suspended until this evaluation was completed. After receiving responses to this announcement, the Service published a notice in the **Federal Register** of a proposed policy for the issuance of permits for giant pandas (54 FR 36823) on September 5, 1989, with a request for comments. This notice finalizes that proposed policy and removes the suspension on reviewing and processing giant panda import permit applications for temporary exhibition loans.

**Information and Comments Received**

Eight organizations and the Ministry of Forestry of the PRC submitted written information and comments on the notice of proposed policy of September 5, 1989. The following is a summary of these comments and the Service's responses.

*Age and Reproductive Potential of Animals Available for Loans*

Comment: One commenter stated that pandas to be considered for loans should not exceed 4 years of age at the time of their return.

Response: The Service agrees with this age limit for females, but, in the absence of additional information to the contrary, still maintains that, since males mature somewhat later than females and since females in strong estrus do not appear to be selective in accepting a male for natural mating, the maximum age of 5 years at the time of their return for males is acceptable.

Comment: At least three comments recommended that older animals not be included in any short-term loans unless there was unequivocal evidence that the animals could not breed. There appear to be indications that the maximum reproductive age of pandas is greater than previously thought, as evidenced by females in China bearing young in their teens and experiencing reproductive cycles in their early twenties, and males have shown reproductive activity in their mid-twenties. The female panda at the National Zoological Park gave birth to a live cub at an estimated age of at least 19.

Response: After consideration of additional information, the Service still feels that older pandas should not be categorically excluded from consideration for loans, although the policy has been modified to take into account an older animal's reproductive potential and whether it has already produced offspring. Therefore, animals 18 years and older will still be considered for loans on a case-by-case basis, especially if they are already represented by offspring and/or are unlikely to breed. With regard to consideration of any pandas between the ages of 4 (or 5 for males) and 18 years, there must be clear evidence that such animals are incapable of reproducing, first, as certified by the Endangered Species of Wild Fauna and Flora Import and Export Administrative Office of the PRC, and second, with the concurrence of veterinary expertise for the applicant and any additional expertise the Service might want to use.

Comment: It was recommended that no young pandas be isolated from other pandas for more than a 6-month period during the 2–3 year period when they might be eligible for loans because a more extended period of isolation might inhibit proper social development. Another commenter suggested that repeat loans should only involve compatible male/female pairs to assure continued social and reproductive development. Another commenter recommended that exhibit loans should not exceed 3 months to 100 days

because the success rate of the project declines after that length of time and a shorter loan would allow the animals to be returned to China to benefit from having time in which to develop social behavioral patterns. A related comment objected to the possibility of pandas being loaned to several locations during one stay in the United States on the basis that repeated moves could increase health and reproductive risks to the animals to unacceptable levels, and that such moves should be limited to two.

Response: The Service expressed similar concerns for the well being of young pandas in its proposed policy, but had stated that "these risks are acceptable if specific beneficial management projects are part of the total import application." Even though the proposal indicated that both young and old pandas might be loaned to more than one location during the time they are in the United States, the Service recognizes that frequent moves of individuals may not be desirable and each such case would be evaluated by contrasting the potential conservation values to be derived for the species against the possible loss of breeding potential of individual animals. Furthermore, for any sequential exhibition loans, the Service would monitor the health of the animal(s) prior to each relocation of the animal(s) within the United States for another exhibition loan. It has been suggested that it might be desirable to allow non-reproductive animals to stay in the country longer while being exhibited at more that one institution, thereby reducing the stresses associated with moving animals into and out of the country in a relatively short period of time. Nevertheless, the Service agrees that some limit on the number of loans and the length of a loan period is desirable for the health of the animals and to minimize any effects on behavioral development. Therefore, loans of young, non-breeding animals for exhibition purposes will be limited to no more than three moves during a loan period that cannot extend beyond 1 year with individual loans being for a period of at least 3 months each. The total time might be extended to 1½ years if a compatible male/female "pair" were involved.

Comment: Two commenters disagreed with aspects of the statement, "In general, the Service believes that animals of breeding age that are already in captivity should be maintained in captive-breeding programs. Therefore, the Service would not support loans of breeding age animals even during the non-breeding season unless the loans are clearly in support of creating breeding opportunities, except for special situations discussed elsewhere in this guidance." It was suggested that the first sentence implies that a systematic international captive breeding program for giant pandas exists, and that inclusion of the exception for "special situations" in the second sentence is too soft as a policy nor are such special situations defined or discussed later.

Response: The use of the phrase, "captive-breeding program," was not meant to imply that an internationally coordinated captive breeding program necessarily exists, rather, that breeding age pandas currently at a facility that has been or that intends to start breeding or attempting to breed giant pandas should remain at that facility in that "captive-breeding program." Finally, the "special situations" discussed elsewhere are those situations when a panda can be shown to be incapable of breeding. The Service continues to support the contention that a breeding loan will only be considered if there is strong evidence that it would enhance the survival of the species.

*Registry of Animals*

Comment: Three commenters felt that inventory records or a registry of all captive-held giant pandas must be available before any more permits are issued for panda loan imports, while another essentially agreed that a registry of pandas available for loans should be available before permits are issued.

Response: The Service agrees that anything from a simple inventory of all captive held animals to a well developed Species Survival Plan for pandas would be desirable, but at this time the latter may not be immediately achievable. At the same time, the Service also feels that requiring all pandas at the facility providing panda(s) for loans to be included in a registry (with information comparable to that in studbooks) might be a reasonable start in this direction and has modified its final policy accordingly.

Comment: One commenter felt that requesting a list of distinctive or identifying markings to keep track of specific animals involved in loans is unreliable, and that a permanent identification such as tattooing should be developed and used in conjunction with specimen photographs for identification purposes. Another commenter expressed concern that the request for age, sex and identifying information for each animal involved in a loan would not be effectively implemented because the Chinese do not now use any standardized system of permanently marking giant pandas.

Response: We agree that a more permanent marking system for giant pandas would be desirable and will encourage the Chinese to develop and use such a system, but we do not feel that we should require any specific system. Furthermore, the Chinese Ministry of Forestry has offered to consult on appropriate identification methods for each animal made available for loan, and the Service appreciates this offer of cooperation.

Comment: It was felt by a commenter that by stating that, "A coordinated registry presumably is or would be maintained by the Chinese Association of Zoological Gardens * * *", the Service is uncertain whether such a registry or family file actually exists, how complete it is, or who maintains it. This commenter also wondered whether the statement in the proposed policy indicating that certain information on pandas for loans should be "available to all involved parties from the PRC Ministry of Forestry" suggests that two lists or registries of giant pandas need to be maintained, one by the Chinese Association of Zoological Gardens and another (for permitting purposes) by the PRC Ministry of Forestry.

Response: The Service is not certain to what extent a family file or registry of giant pandas has been developed by the Chinese, but only one file or registry would need to be maintained so long as the same list is provided to the PRC Ministry of Forestry (functioning as the Chinese Management Authority) so that they can make necessary information available to a permit applicant, as required under this policy. The Service understands that recent contacts with the Chinese suggest that they are still interested in developing a studbook or registry for giant pandas. The Service encourages this endeavor, and therefore will require a complete registry of all giant pandas being held at the facility offering animals for an exhibition loan as part of a permit application.

Comment: The Ministry of Forestry of the PRC felt that the specific wording in the proposed policy regarding the registration of animals and the need for listing distinguishing markings of animals on loan was vague. They suggested that the statement should be elaborated or, through consultation, "determined by the concerned authorities of both countries when the import and export licenses are being verified.". The following wording was then suggested: "The pandas on loan for exhibition purposes shall be registered

at and recorded by the Ministry of Forestry of the People's Republic of China. The export license shall specify the age, the sex and the origin of the animal, including whether its was bred in captivity or the time and place if captured in the wild."

Response: The Service feels that the proposed policy essentially provides for this. The summary statement in the proposed policy read: "Information about animals involved in a loan should be documented in a registry or family file available from the PRC Ministry of Forestry, and they should be certified as to their age and sex, with any distinctive or identifying marks indicated, on the export license or permit.". The thrust of all the statements in the policy concerning information about pandas available for loans is that a registry or studbook of all captive giant pandas should be developed and maintained by the Chinese. The Service encourages such development, and considers that requiring a registry of all giant pandas held at a lending facility at the time of permit application as a reasonable first step in this direction, as well as coinciding with the spirit of the Ministry's suggested re-wording. Regarding individual identifying markings, the Service agrees and will pursue discussions between concerned authorities of the two countries that might be useful in developing a permanent marking and/or identification system to be used on captive giant pandas. The final policy has been modified to partially conform to the Ministry's suggested wording.

Comment: A commenter indicated that an inventory of captive pandas would provide evidence of the status of the captive population, and thereby allow the establishment of quotas for panda loans. In addition, breeding facilities in China should be inventoried to facilitate placement of breeding age pandas there before any are made available for loans for display purposes only. Another commenter suggested that with relatively few pandas being born in captivity in China, an increased demand for pandas for loan in the absence of a quota for panda loans might place pressure on the Chinese to remove additional animals from the wild to satisfy this demand. They recommended the imposition of an annual quota of two duos "(two sets of two pre-reproductive animals)" per year from China to be distributed to several institutions for 2–4 months at a time.

Response: As both commenters imply, a detailed record of captive pandas could very well serve as nucleus for a coordinated captive breeding program for the species, and could provide a more complete record to show the number of pandas that might be available for loans. But, acquisition of this kind of information would not necessarily mean that panda exhibition loan quotas should be or would need to be established. In fact, if the information on captive held pandas in China were sufficiently detailed concerning ages, captive births, etc., it could be used to keep track of the availability of specific animals over time and whether they fit the parameters of this policy as likely candidates for exhibition loans, which might then obviate the necessity of establishing quotas. At present, the Service feels that the more important aspect of this suggestion is encouraging the development of a registry or studbook of captive pandas, especially in China, and to this end the policy does require that all pandas at an institution from which a panda would be obtained for an exhibition loan must be included in a registry that includes studbook information. Through this the Service hopes that a total inventory of captive held pandas might eventually be established. With this information other decisions might be made, including the possibility of establishing loan quotas. Also, should the Service acquire any evidence indicating that animals are being removed from the wild to satisfy increased exhibition loan requests, the moratorium for such loans might be reestablished.

*Conservation Benefits of Specific Projects*

Comment: One commenter was opposed to any loan that is not intended to benefit giant pandas through public education and captive breeding, and another maintained that the United States offers the most likely environment for the establishment of successful programs for the captive propagation of pandas. In contrast, another commenter felt that as long as it can be assured that loans would not interfere with potential captive breeding programs for pandas, then the benefits in terms of public education and the provision of funds targeted for conservation of the species and its habitat would benefit the species as long as animals for loan are in good physical condition.

Response: Among other things, it is the intent of this policy to ensure that any imports of giant pandas on loan in the U.S. would be for purposes that are not detrimental to the survival of this species, would not be likely to jeopardize the continued existence of the species, would enhance the propagation or survival of the species, and that the permit applicant could suitably house and care for the animals. Therefore, much of the policy is directed toward minimizing the deleterious impact of loans on any existing or potential captive breeding programs while at the same time maximizing the conservation benefits that result from these loans through the use of funds derived due to the loans. On the other hand, this policy would not prohibit loans designed specifically for captive breeding purposes. The Service feels that it would be short-sighted to fail to allow utilization of non-reproductive, captive-held pandas in ways that have the potential of contributing conservation value for the survival of the species in the wild. Finally, the health and physical condition of the animals while on loan should be ensured by assuring that applicants are suitably equipped to house and care for any giant pandas while they are in the United States.

Comment: One commenter expressed concern regarding references to captive population projects that may enhance the propagation of the species and the "significant relocation of the species," because they were unaware of the "progress of cooperative breeding and/or conservation projects for the species." The commenter believed that any relocation of animals for breeding purposes should first bolster the breeding efforts in China and then enhance and expand captive breeding efforts outside China.

Response: The statement to which the commenter referred was part of a brief summary of the Service's understanding of what is included in the PRC's management plans to enhance the survival of pandas. The complete statement says that "there are some projects related to the captive population that may enhance the propagation, hence survival of the species in captivity, such as development of a studbook, significant relocation of the animals for breeding purposes and, under special circumstances (i.e., where actually needed for animals already in captivity), the creation or renovation of breeding facilities." Relocation of animals (not species) was mentioned as one example of the kind of efforts that might be carried out under the management plan to enhance propagation (presumably in China), but we believe that any movements of animals should first bolster breeding efforts wherever they are likely to contribute the most to captive breeding efforts.

Comment: The same commenter was also concerned that although the Service

preferred that the high priority projects be certified by the Ministry of Forestry of the PRC, there were no criteria provided in the policy as a basis for this certification. Another commenter referred to this same statement in the policy while questioning whether funding part or all of a high priority project would satisfy the enhancement requirements of the Endangered Species Act or the no detriment determination required by the Convention or both.

Response: The statement referred to in the policy says that "high priority projects identified in the panda reserve and national management plans or appropriate captive breeding programs, *preferably* (emphasis added) certified by the Ministry of Forestry of the PRC to the U.S. Management Authority, would be accepted as offsetting the possible effect of loans of pandas . . .". Such high priority projects can be merely identified in the management plans, but the Service would prefer that these plans be accepted officially by the PRC Ministry of Forestry, which would constitute certification that projects had been recognized by the PRC as having significant conservation or enhancement value for the giant panda. As for the applicability of enhancement values of a project, the Endangered Species Act requires that activities must enhance the propagation or survival of the species, and an import under the Convention may be judged to be for purposes that are not detrimental if the activities of the permit are determined to be likely to enhance the survival of the species. Therefore, such "high priority projects" might satisfy both the Act and the Convention. There are no totally objective criteria to determine the level of funding and support of projects required to achieve enhancement or no detriment. These are qualitative requirements that should appropriately be considered on a case-by-case basis.

*Determination of Whether Import is for Primarily Non-Commercial Purposes*

Comment: One commenter stated that "The public exhibition of captive animals with the expectation to deriving substantial revenues therefrom is a commercial activity, regardless of the use to which such revenues may be put and regardless of whether the exhibitor is public or private, or a profit or non-profit institution." The same commenter noted that "The parties to CITES have by resolution made abundantly clear that only when the deriving of such revenues from the exhibition of Appendix I specimens is incidental and subordinate to other clearly non-commercial purposes can the importation of such specimens be permitted." Another commenter recommended that short-term exhibition loans only be allowed when it is unequivocally clear that non-commercial aspects of the exhibition predominate over commercial aspects.

Response: An activity that is primarily commercial, with a secondary non-commercial component, would not qualify for an Appendix I import permit.

An activity can generally be described as "commercial" if its purpose is to obtain economic benefit, including profit. The Service agrees that the importation of Appendix I specimens should only be permitted if revenues derived from their exhibition are secondary to other clearly non-commercial purposes. The Service agrees that the exhibition of animals with the sole expectation of deriving revenues is a commercial activity that by itself would preclude their importation. However, one must consider all uses of an animal in order to determine whether or not it will be used for primarily commercial purposes. Non-commercial uses must clearly predominate to enable import.

Comment: One commenter noted that the burden of proof for showing that the intended use of specimens of Appendix I species is clearly non-commercial shall rest with the person or entity seeking to import such specimens.

Response: The Service agrees, particularly in the importance of the submission of a detailed plan and annual reports, and this has been incorporated into the final policy.

Comment: Several commenters recommended that any revenues specially generated from exhibitions should be devoted to giant panda conservation only. Other commenters recommended that any excess funds generated be used for the conservation of either the giant panda or other species.

Response: The Service does not agree that all such revenues must be utilized for giant panda conservation. The Service does agree that all such revenues should be utilized for either the conservation of the giant panda, the conservation of other endangered species, or the general conservation of fauna and flora; this would be consistent with the goals of the Convention and satisfy the "not for primarily commercial purposes" test.

Comment: One commenter urged the Service to enforce the requirement that Appendix I imports be only for primarily non-commercial purposes in all permitting procedures for all Appendix I species.

Response: As per 50 CFR 23.15, in determining whether an applicant can receive an Appendix I import permit, the Service determines whether or not the import permit, the Service determines whether or not the import is to be used for primarily commercial activities. The Service is committed to implementing article III paragraph 3(c) of the Convention, and all pertinent resolutions of the Conference of the Parties, which articulate the restriction on imports for primarily commercial purposes.

Comment: A commenter urged the Service to establish a more rigorous set of objective criteria and guidelines than what was proposed. The commenter stated that the Service must objectively determine the level at which non-commercial uses clearly predominate over commercial uses, and suggests 75 percent as a cutoff.

Response: The Service agrees that applicants must make a showing that the non-commercial aspects of the panda exhibition loans clearly predominate over commercial uses. Policy guidance is specified later in this notice.

Comment: A few commenters objected to disallowing profit-making institutions from receiving a panda loan. Two commenters recommended that the sole test should be the use of the funds generated by the panda loan. One commenter agrees with the Service's policy that non-commercial uses must be predominant to be deemed primarily non-commercial, but objects to the import turning on the non-profit institutions can take actions that are non-commercial in nature.

Response: The Service notes that public, non-profit institutions or organizations have a substantially less difficult burden in satisfying the "not to be used for primarily commercial purposes" requirement. As provided in resolution Conf. 5.10, "all uses whose non-commercial aspects do not clearly predominate shall be considered to be primarily commercial." As an Appendix I species, the animals loaned are not to be used in the course of primarily commercial activities. Collection of revenues by the importing institution for profit-making purposes would be judged to be a primarily commercial activity. As per resolution Conf. 5.10, "any transaction which is not wholly non-commercial will be regarded as commercial" by the Service. The Service is aware that profit-making institutions can pursue non-commercial activities. In the specific case of panda loans for exhibition purposes, the profit-making motive of for-profit institutions, coupled

with the strong income-generating potential of such an exhibition and the publicity that would inure to the economic benefit of the institution, could frequently outweigh any non-commercial purposes.

Therefore, the Service will hold commercial enterprises to a stricter burden of proof to show that the "non-commercial" aspects clearly predominate and that all requirements of resolution Conf. 5.10 have been met.

Comment: One commenter stated that loans for exhibition, by their very nature, cannot be considered to be for commercial purposes, whether or not the sponsors and organizers of giant panda exhibition loans derive direct or indirect economic benefits.

Response: Wildlife used for exhibition purposes can potentially be used for either primarily commercial or primarily non-commercial purposes, and as such, each application for an import permit will be considered on a case-by-case basis.

Comment: One commenter notes that confining panda exhibitions to non-profit organizations would not serve the goal of preserving these animals, and removes potentially valuable sources of financial support for panda conservation programs.

Response: The parties to the Convention have made it clear that a permit for the import of specimens of Appendix I species may be issued only if the Management Authority of the country of import is satisfied that the specimens are not to be used for primarily commercial purposes, and that the importation of Appendix I specimens would only be permitted if revenues derived form their exhibition are clearly subordinate to other wholly non-commercial purposes.

Comment: One commenter questions the ability of an exhibiting institution to isolate revenues resulting from a panda exhibition, resulting in accounting difficulties. The commenter proposes instead that both an institution's accreditation by the American Association of Zoological Parks and Aquariums (AAZPA) and the loan agreement with the exporting country suffice as a test of non-commercial purposes.

Response: The Service does not consider an institution's accreditation by AAZPA to be relevant to the question of whether or not an import is for primarily non-commercial purposes. Indeed, the use of species for primarily commercial or non-commercial purposes is not a criterion for AAZPA accreditation. It is not within the Service's authority to limit those institutions it considers to those that are accredited by AAZPA, a private organization. The Service cannot allow the loan agreement between AAZPA and the exporting country to suffice as a test of primarily non-commercial purposes, since under article III and resolution Conf. 5.10 the test is the actual uses to which a specimen is to be put, and not the transaction between the country of export and the recipient. Furthermore, the loan agreement may or may not be fully descriptive of the uses of the animal or the commercial or non-commercial nature of the loan.

Comment: One commenter objects to the Service's barring entities simply because of their business and tax status, noting the charitable endeavors of America's business corporations in making the point that the Service should not distinguish between public/non-profit and private/profit-making entities.

Response: The Service is aware of many of the fine philanthropic endeavors of many of America's businesses and corporations, which result from their successful commercial activities. The Service urges profit-making animal exhibitors to make contributions that benefit the conservation of species in the wild. The Service does in fact encourage private, for-profit institutions to cooperate with public, non-profit institutions for the benefit of the conservation of threatened and endangered species. As noted above, however, the Convention precludes the trade in Appendix I animals for primarily commercial activities. Although this CITES standard does not preclude the participation of business organizations in the panda exhibition loan activity, a high burden of proof must be borne by such applicants to show that their applications satisfy the "not to be used for primarily commercial purposes" test.

*Suitability of Facilities*

Comment: One commenter expressed the view that this section of the policy should require applicants to consult with independent experts on the stewardship of the giant panda, as well as the animal welfare community, to ensure humane standards of handling, training, and care for the animals.

Response: We are not aware of independent experts who have had experience with the care and upkeep of giant pandas outside the zoo community, and the policy requires that an applicant consult with at least two other facilities that have had experience with maintaining pandas in recent years. The Service considers that most accredited zoo facilities make every effort to provide humane standards of handling and care for animals. But, regardless of an applicant's sources of advice and expertise, it is the responsibility of the Service to judge the suitability of their facilities on a case-by-case basis.

Comment: The same commenter also felt that the Service should state in the policy that no giant pandas will be used in animal acts or shows during any short-term loans.

Response: While the Service recognizes that use of individuals of some animal species in various entertainment performances may provide desirable exercise, the Service has no information to show that this is desirable for the panda. In the absence of such information and considering that the focus of managing captive pandas should be for breeding purposes, any training or use of pandas for animal acts is seen as distracting from the necessary breeding program. Any use of pandas in animal acts during exhibition loans could encourage such training activities; therefore, the Service agrees that pandas should not be used in animal acts or shows during loans to the United States. Such a stipulation is included in the final policy.

Comment: It was suggested by another commenter that the Service should make accreditation by the AAZPA the standard by which an institution could be deemed to qualify as an appropriate permittee and caretaker of giant pandas. Similarly, another commenter suggested that a recipient facility should have the full support of the AAZPA or other national professional zoo associations.

Response: The Service cannot abdicate or delegate its responsibility under the Convention to make a determination regarding suitability of facilities for the import of giant pandas, although comments and advice from every source will be welcomed and sought when considering each permit application.

Comment: Two commenters objected to making permit issuance conditional on inspection of giant panda facilities by representatives of the PRC. It was felt that such conditioning would set a dangerous precedent for imports of other Appendix I species for display purposes.

Response: The Service recognizes this concern. Approval of facilities by the Chinese has been part of all contractual agreements between the previous applicants and the PRC, and the Service expects this requirement to continue. The Service will continue to request evidence as to whether such a stipulation has been made in the agreement, and, if so, that it has been satisfied before pandas will be allowed

to enter the country. If such a stipulation has not been made, the Service will not unilaterally require such inspections, although the Service will conduct whatever review of facilities that it believes warranted.

Comment: A commenter inferred that the statement, "* * * the Service believes that there is sufficient information available that, if followed, would ensure the safety of the pandas and the viewing public," meant, "* * * that the zoological world now has enough knowledge of how to manage giant pandas in a zoo environment that the success of any giant panda short-term exhibition loan or long-term breeding loan would be ensured as long as that knowledge were applied correctly."

Response: The Service essentially agrees with this statement except to note that during any exhibition loan or breeding loan, as well as during any permanent transfer, single catastrophic events can occur such that "success" could not be ensured, nor could successful breeding be assured during any breeding loans/transfers.

Comment: Another commenter considered that it is inadequate to merely require an applicant to present a statement indicating that necessary reviews of other panda facilities have occurred, that features for maintaining and exhibiting pandas have been incorporated, and that zoo staff have proper training. The commenter felt that applicants should be required to submit a detailed explanation of how they intend to house and care for the giant pandas, including a description of how they have complied with the National Zoological Park's recommended measures for giant panda care and facilities. This commenter also questioned the use of "successfully" in the statement that says applicants should, "consult with at least two other facilities that have successfully held pandas in recent years," and whether the definition of success might change "depending on whether long-term or short-term loans were being considered."

Response: The proposed policy stated that, "Applicants should demonstrate that they have consulted with at least two other facilities that have successfully held pandas in recent years, that they have facility designs that address the National Zoological Park's recommended measures for giant panda care and facilities, and that zoo staff, especially keepers, have had proper training. Facilities should be fully acceptable to the Service . . ." The operative parts of this statement are first, the word, "demonstrate," and second, the phrase, "Facilities should be fully acceptable to the Service . . ." For all Convention import permits the applicant is already required to submit a detailed description of their facilities and expertise, and the Service feels that these statements are adequate to require as much from an applicant as is necessary to be satisfied that facilities are fully acceptable. Article III, paragraph 3(a), of the Convention requires, among other things, that before an import permit is issued for an appendix I species, "the State of import is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it." No other guidance has been provided by the Parties to the Convention. Concerning the use of the term "successfully" in regard to facilities that have held giant pandas in recent years, the Service believes that giant pandas should leave the recipient's facility following a loan period in at least the same condition that they exhibited upon entry.

*Response to the Secretariat's Views*

Comment: One commenter applauded the statement in the guidelines that, "No exhibition loan permit would typically be issued for animals removed from the wild after December 30, 1986," because this would mean that only captive born pandas would be available for loans. However, they urged the deletion of the word "typically" because this could allow for the removal of more animals from the wild. They were also concerned that the arbitrary nature of the December 30, 1986, date could lead to its being changed easily.

Response: As stated in the proposed guidelines, "The Service will continue its policy of approving applications only if it is sure of the possibility that the loan did not, or will not, contribute to removal of pandas from the wild." The date of December 30, 1986, was designated because the Service first became aware of increased interest in loans in 1987 and considers that the value associated with these loans may have contributed to removal of additional animals from the wild.

*Miscellaneous Comments*

Comment: One commenter noted that the Service should indicate the likelihood that this policy will change as more information on giant panda biology is obtained. They also suggested that the Service should "implement a mechanism to determine the effects of short-term exhibit loans, including the analysis of the reproductive activity and reproductive success of giant pandas involved in short-term loans in the past and in the future."

Response: It is not possible to indicate in terms of probabilities whether this policy will change or at what frequency, but the Service would anticipate that any significant change in biological knowledge of the giant panda could result in a reappraisal of the policy. Regarding the effects of loans on panda reproduction, we do not anticipate that the number of animals on loan for given periods of time would be large enough to make record keeping difficult, and the Service, in cooperation with the PRC Ministry of Forestry will endeavor to maintain records on those pandas involved in loans to the United States. Permits may be conditioned with a requirement that a report be submitted on the physical condition of an animal during the course of a loan period. Ultimately, follow-up information on effects of loans will have to be derived from records kept by the Chinese, which further increases the importance of encouraging the Chinese to maintain a registry or studbook for captive pandas.

Comment: Another commenter thought that "There should be a waiting period for zoological gardens requesting permits for repeat exhibit loans. A ten-year period may be appropriate."

Response: The Service appreciates this concern, but feels that it is appropriate to make this decision based on the enhancement value to the species on the one hand and potential detrimental affects to the species on the other hand.

Comment: One commenter criticized the excessive flexibility of the policy resulting from the frequent use of terms such as "in general," "usually," "typically," "some," "special circumstances," and "special situations." For instance the statement, "applicants usually must include descriptions of projects to be funded in China," should read, "applicants must include * * *". The commenter felt that the use of these terms in the guidelines allows almost any applicant for giant panda loans to fulfill the stated criteria.

Response: In some cases the use of more specific terms could eliminate the flexibility characteristic of policy and might necessitate the promulgation of rigid regulations under which it would be difficult to provide the individual consideration of permit applications that the Service feels is desirable. Nevertheless, we have reviewed the use of qualifying terms in the policy, such as generally and typically, and omitted those (including the one dealing with descriptions of projects) that did not appear to affect necessary flexibility. This should especially be reflected in

the policy on giant panada loans described at the end of this notice.

Comment: The policy states that, "this proposed policy also addresses long-term loans for breeding purposes * * *"; however, one commenter pointed out that there is no additional reference to long-term loans in the document and urges that provisions for such loans be included.

Response: Loans for breeding purposes in the United States have not been requested, but if imports for such programs should be requested, the Service would generally be supportive of loans for captive breeding efforts. However, whether such loans would disrupt successful breeding activities would have to be considered, and each such request would be considered on a case-by-case basis. Information on which to base policy may change by the time that any such import is requested.

The U.S. Fish and Wildlife Service has reviewed available information, comments received, and present policies to ensure that those loans of giant pandas that are permitted will not be harmful to the survival of the species. To the best of our knowledge, the PRC Ministry of Forestry is developing management plans for panda reserves, and the Chinese Association of Zoological Gardens is making a concerted effort to coordinate and strengthen the captive breeding program for pandas in China. The U.S. policy presented herein was developed to provide all involved and interested parties with the Service's understanding of the issues that it considers important to ensure that loans will not have a detrimental effect on the species and will contribute to specific activities most likely to enhance the propagation or survival of the species. The June 24, 1988, Federal Register notice focused on temporary exhibition loans, since recent loans have been of this type. However, this proposed policy also addressed loans for breeding purposes because these loans also may have significant effects on the species.

**Policy on Giant Panda Loans**

Before any import permit will be granted, it must be reviewed in terms of the applicable requirements of the Convention and the Act by the Service's Offices of Scientific and Management Authority. Issuance of an import permit under the Convention requires prior findings that: (1) The proposed import would not be for purposes detrimental to the survival of the species; (2) the import would not be for primarily commercial purposes; and (3) the permit applicant could suitably house and care for the animals. Issuance of a permit under the Act requires prior determinations that, among other things: (1) The import would be for scientific purposes or to enhance the propagation or survival of the species, in a manner consistent with the purposes and policies of the Act; and (2) issuance of the import permit would not be likely to jeopardize the continued existence of the species. These requirements are further implemented by application requirements and issuance criteria found in 50 CFR 13.12, 17.22, 23.14, and 23.15.

With regard to making the first findings listed above under both the Convention and the Act, the issue is to determine whether the loss of breeding potential as a result of a loan is offset by specific enhancement features in order to allow determinations that the import will be for purposes that are not detrimental and that will enhance the survival of the species. The second determination listed above under the Act (that the action would not be likely to jeopardize the continued existence of the species) would, of course, also have to be made.

*Age and Reproductive Potential of Animals Available for Loans*

1. Applications to import giant pandas of breeding age would not be considered, even during the non-breeding season, unless the loans are clearly in support of creating breeding opportunities that would enhance the survival of the species, except for special situations where an animal over 18 years of age is already adequately represented by offspring or is unlikely to breed, or for an animal, regardless of age, that is incapable of reproducing (as described below). Breeding loan permit applications would be considered as long as the breeding situation can be shown to contribute to the propagation of the species or to the enhancement of the species, and would not be detrimental to the species' survival.

2. For purposes of this policy guidance, only giant pandas that fall into one of the following categories would be considered eligible for temporary exhibition loans.

(a) Animals that are independent of maternal care but are not yet of breeding age or approaching breeding age. Specifically, this includes females at least 2 years of age at the start of a loan period, and under 4 years at its conclusion; and males at least 2 years of age at the start of a loan period, and under 5 years at its conclusion.

(b) Animals that are more than 18 years of age, especially if they are already represented by offspring and/or are unlikely to breed.

(c) Animals that are incapable of reproducing. (Aggressive or incompatible behavior, or low sperm count would not be acceptable as the sole indicator of an inability to reproduce.) Reproductive incapacity should first be certified by the Endangered Species of Wild Fauna and Flora Import and Export Administrative Office of the PRC, and second, should receive concurrence from veterinary expertise for the applicant and from any additional expertise the Service may request.

3. The following time constraints apply only to exhibition loans of young, non-breeding animals. During a single 1-year loan period in the United States, up to three different institutions may receive and display the pandas for periods of a least 3 months. Each institution following the first in the sequence of exhibitions must have submitted complete application material as well as written authorization from the Chinese Management Authority to the Service no later 6 months prior to the date of the planned exhibition, which must then qualify it for an individual U.S. import permit. The overall loan period should not extend for more than 1 year (or 1½ years in the case of a compatible male/female pair), and each loan should be for a period of at least 3 months, unless health consideration dictate otherwise.

4. The Service will monitor the health of pandas imported, especially prior to the relocation of animals in the United States.

*Registry of Animals*

1. As part of an application for a permit to import pandas, applicants shall include evidence that all the giant pandas held in captivity at the facility offering animals for loan are included in a registry or family file available to the Ministry of Forestry of the PRC, and the registry will contain information on each panda comparable to that included in international studbooks.

2. The export permit issued by the PRC must certify the age, sex, and origin (whether the animal(s) came from the wild or was born in captivity), and any distinctive marks on each animal.

*Conservation Benefits of Specific Projects*

1. Permit applications for temporary exhibitions shall include descriptions of conservation projects to be funded. These projects should be designed to implement high priority tasks from the panda reserve and national management plans developed with the PRC, or appropriate captive breeding

programs (with supporting information from the Chinese Management Authority if available). Preferably, any management plans or breeding programs cited as including projects to be funded should be formally approved by the Ministry of Forestry of the PRC, but plans or programs that have not been officially approved will be considered. (The Service will identify the specific projects to which resources would be committed by the applicant as part of the **Federal Register** notice for each such endangered species permit application.)

2. Projects supported through loans or permanent transfers of pandas into captive breeding programs will also be considered in deciding whether enhancement criteria under the Act (50 CFR 17.3 & 17.22) have been met.

3. The ultimate objective of managing captive pandas should be for breeding purposes and any training or use of pandas in animal acts would be considered as detracting from this objective; therefore permit applications to import giant pandas to be used in animal acts or shows during the loan period would not be considered, and such uses would be foreclosed by condition included in permits issued for other, acceptable educational/conservation uses.

*Determination of Whether Import is for Primarily Non-commercial Purposes*

With regard to the determination of whether an exhibition loan of giant pandas is not to be used for primarily commercial purposes, the Service will utilize the following policy:

1. Resolution Conf. 5.10 of the Conference of the Parties to the Convention establishes that the nature of the transfer between the owner in the country of export and the recipient in the country of import may be commercial. It is the intended use of the specimens in the country of import that must not be for primarily commercial purposes, and it is the responsibility of the recipient country's Management Authority to make this determination. The resolution further establishes that there may be some commercial aspects of that use, but that the non-commercial uses must predominate in order to be deemed primarily non-commercial.

2. Public, non-profit institutions, organizations and agencies will receive consideration for panda loans. The Service's general regulations at 50 CFR 10.12 define "public" institutions as those that * * * "are open to the general public and are either established, maintained, and operated as a government service, or are privately endowed and organized but not operated for profit." Although commercial organizations may also choose to apply for such loans, the profit-making characteristics of such organizations will make it more difficult for the Service to find that the specimen(s) proposed for import is not to be used primarily for commercial purposes. As in all cases, the burden rests with the applicant to show that this CITES requirement is satisfied. Of necessity, the burden of proof will be higher for commercial enterprises than for non-profit entities.

3. It is the Service's policy that funds or other valuable considerations raised directly or indirectly by a public institution or other organization that are obtained by the organization(s) or institution(s) involved as result of the exhibition loan are, to the extent that such funds or other valuable considerations exceed the expenses that are properly attributable to the exhibitions, to be used entirely for the following non-commercial purposes: the conservation of the giant panda, the conservation of other endangered species, and/or the general conservation of fauna and flora.

Collection of revenues from the panda exhibition by the importing institution, either for its own use or for the use of other organizations, for purposes other than those described above, would be judged to be a primarily commercial activity, as would the use of revenues for profit-making purposes.

4. Each applicant for a panda loan, in satisfying the applicable requirements of 50 CFR subchapter B, should submit a detailed plan for the allocation of all funds raised in excess of expenses, as a result of the panda loan.

5. Each recipient of a permit to obtain a panda loan would likely be required, in accordance with 50 CFR 13.45, to submit an annual report to the Director as a condition of the permit. The annual report shall contain a full accounting of all funds raised directly or indirectly by the institution or organization, the portion of those funds that is in excess of expenses, and the uses to which those funds have been or will be put, in accordance with the plan submitted previously to the Service.

These policy considerations will be used by the Service only for determining whether panda imports for short-term exhibition purposes are primarily commercial in nature. They are not intended to apply to other Appendix I import permit applications. All such applications must continue to demonstrate that the proposed import meets the general requirements of resolution Conf. 5.10 to satisfy the "not to be used for primarily commercial purposes" test.

*Suitability of Facilities*

Under the Convention, the Service must be "satisfied that the proposed recipient of a living specimen [to be imported] is suitably equipped to house and care for it;". To aid in satisfying this requirement, applicants must demonstrate that they have consulted with at least two other facilities that have successfully held pandas in recent years, that they have facility designs that address the National Zoological Park's recommended measures for giant panda care and facilities, and that zoo staff, especially keepers, have had proper training to care for pandas. Since approval of facilities by the Chinese has been part of all contractual agreements between the applicant and the PRC in the past, the Service expects this requirement to continue. Therefore, the applicant should also provide evidence as to whether such a stipulation has been made in the agreement and, if so, as a condition of the permit, the applicant would certify that the agreement stipulation has been satisfied before animals will be allowed to enter the country.

*Response to the Secretariat's Views on Giant Panda Loans*

The Service notes with approval the recommendation of the Secretariat that no exemptions be granted to the requirements of Article III of the Convention for the shipment of giant pandas, even for animals that might otherwise qualify for an exemption as "pre-Convention" animals under Article VII. However, the Service does not currently have the authority to refuse to accept a valid pre-Convention certificate. If the Management Authority of the country of origin or of the country of re-export does not issue a pre-Convention certification, the Service will require a U.S. import permit and export permit or re-export certificate, as appropriate, from the exporting country in accordance with Article III of the Convention. The Service will also continue its policy of approving applications only if it is sure of the possibility that the loan did not, or will not, contribute to removal of pandas from the wild, and that non-commercial purposes for the loan predominate. No exhibition loan permit would typically be issued for animals removed from the wild after December 30, 1986.

Note.—The information collection requirements identified in this policy as part of the permit application have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0022. The additional information collection requirements,

especially as pertains to the annual report(s) contained in item 5 of the section titled, "Determination of whether import is for primarily non-commercial purposes", will be submitted to the Office of Management and Budget for approval and will not be required until they have been approved by that Office.

**Authority:** The authority for this action is the Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249; and the Endangered Species Act of 1973, as amended (16 U.S.C.1531–44).

Dated: December 3, 1990.

**Richard N. Smith,**

*Acting Director, Fish & Wildlife Service.*

[FR Doc. 91–6111 Filed 3–13–91; 8:45 am]

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# Proposed Rules

Federal Register
Vol. 56, No. 50
Thursday, March 14, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 917

[Docket No. FV-90-252PR]

### Proposed Increase in 1990-91 Budgeted Expenditures for the Pear Commodity Committee; California Fresh Pears, Plums, and Peaches

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would authorize an increase in expenditures for the Pear Commodity Committee (committee) established under Marketing Order No. 917 for the 1990-91 fiscal period. The fiscal period covers the period March 1, 1990, through February 28, 1991. The expenses would be increased from $1,138,367 to $1,141,342. The $2,975 increase is needed to cover unforeseen administrative expenses. Funds to administer this program are derived from assessments on handlers.

**DATES:** Comments must be received by March 25, 1991.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202-475-3919.

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under Marketing Agreement and Marketing Order No. 917 (7 CFR part 917) regulating the handling of fresh pears, plums, and peaches grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 45 handlers of California pears regulated under this marketing order, and approximately 300 pear producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of California pear producers and handlers may be classified as small entities.

Marketing Order No. 917, administered by the Department, requires that the assessment rate for the committee for a particular fiscal year shall apply to all assessable pears handled by regulated handlers from the beginning of that period. The fiscal period covers the period March 1, 1990, through February 28, 1991. An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are pear producers and handlers. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area, and are in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing the anticipated expenses by expected pear shipments in 36 pound cartons or equivalents. Because that rate is applied to actual shipments, it must be established at a rate that will produce sufficient income to pay the committee's expected expenses.

A final rule published in the **Federal Register** on August 29, 1990 (55 FR 35294), incorrectly authorized 1990-91 fiscal period expenditures of $985,750. The total authorized expenditures should have been $1,138,387, as proposed in the **Federal Register** on August 3, 1990 (55 FR 31605), and as described in the supplemental information of the final rule. The final rule also fixed an assessment rate of $0.25 per 36 pound box, or equivalent, of assessable pears handled by handlers under M.O. 917 during the 1990-91 fiscal period.

At its January 30, 1991, meeting, the committee voted unanimously to increase its budget of expenses from $1,138,387 to $1,141,342. The proposed $2,975 increase is needed to cover the cost of unforeseen administrative expenses. No change in the assessment rate was recommended. Adequate funds are available to cover the increase in expenses proposed by this action.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of 10 days is appropriate because the budget increase approval should be expedited. The committee needs authority to pay the additional expenses as soon as possible.

**List of Subjects in 7 CFR Part 917**

Marketing agreements, Pears, Plums and peaches, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 917 be amended as follows:

Note: This section will not appear in the annual *Code of Federal Regulations.*

## PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 917.254 is revised as follows:

**§ 917.254 Expenses and assessment rate (Revised).**

Expenses of $1,141,342 by the Pear Commodity Committee are authorized, and an assessment rate of $0.25 per 36 pound box, or equivalent, of assessable pears is established for the fiscal year ending February 28, 1991. Unexpended funds may be carried over as a reserve.

Dated: March 11, 1991.

**William J. Doyle,**

*Associate Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 91–6113 Filed 3–13–91; 8:45 am]

BILLING CODE 3410–02–M

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**Agriculture Stabilization and Conservation Service**

**7 CFR Part 723**

**Farm Marketing Quotas, Acreage Allotments, and Production Adjustment; Tobacco**

**AGENCY:** Agricultural Stabilization and Conservation Service (ASCS), USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The proposed rule amends the regulations at 7 CFR part 723 to implement the provisions of the Farm Poundage Quota Revisions Act of 1990 (Pub. L. 101–577), enacted November 15, 1990) with respect to the burley tobacco marketing quota program. The proposed rule permits, effective for the 1991 and subsequent crop years, the sale of burley tobacco marketing quota from one farm to another farm in the same county; requires, beginning with the 1994 crop, that a burley tobacco farm quota will be reduced to zero if no tobacco is planted or considered planted in two out of the three immediate preceding years on the farm for which such quota is established; increases the burley tobacco lease limitation from 15,000 to 30,000 pounds for the receiving farm; permits the lease and transfer of burley tobacco quota from one county to any other county in the State of Tennessee provided a majority of active burley tobacco producers approve such lease and transfer by a state-wide referendum; and restricts the transfer of burley tobacco quota which transfers with the divided land when a farm is divided through reconstitution.

In addition, the proposed rule amends the regulations to require burley tobacco quotas to be reduced when there is no cropland suitable for the production of a crop on the farm for which such quota is established; redefines the term "active burley tobacco producer"; revises the period required to share in the risk of producing flue-cured tobacco that is purchased or reallocated; sets forth the actions that will be taken by ASCS if burley and flue-cured tobacco dealers do not comply with end-of-marketing year purchase and resale reporting and inspection requirements; requires burley and flue-cured tobacco warehouse operators and dealers that purchase from processors and manufactures tobacco that is in the form not normally marketed by producers to maintain certain records and provide for the inspection and weighing of such tobacco by an ASCS representative; adds a scheme and device provision; and provides for the collection of tobacco marketing assessments as set forth in the Omnibus Budget Reconciliation Act of 1990.

**DATES:** Comments must be received on or before March 29, 1991, in order to be assured of consideration.

**ADDRESSES:** Interested persons are invited to submit written comments to: Director, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415. Washington, DC 20013. All written submissions made pursuant to this notice will be made available for public inspection in room 5750—South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m. Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Raymond S. Fleming, Agricultural Program Specialist, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone (202) 447–4318.

**SUPPLEMENTARY INFORMATION:** This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512–1 and has been classified as "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises, to compete with foreign-based enterprises in domestic or export markets.

Information collection requirements contained in the current rule have been approved by OMB through May 31, 1992, under the provisions of 44 U.S.C., chapter 35 and have been assigned OMB #0560–0058 and #0560–0006. These information collections have not changed as a result of this proposed rule, however, an addendum will be sent to OMB reflecting any change in requirements. Public reporting burden for the collections of information contained in this regulation are estimated to range from 5 minutes to 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of this rule.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases; 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

This proposed rule is necessary to implement the provisions of the Farm Poundage Quota Revisions Act of 1990 which amended the Agricultural Adjustment Act of 1938 (hereinafter referred to as the "1938 Act") and the Omnibus Budget Reconciliation Act of 1990. Additionally, the proposed rule provides changes to the current regulations to strengthen the

administration of the burley and flue-cured tobacco programs.

**Discussion of Proposed Changes**

The major provisions of this proposed rule are as follows:

(1) *Sale of burley tobacco marketing quota.* Currently, regulations provide that burley tobacco marketing quota can be sold only under mandatory sales provisions set forth in section 316B of the 1938 Act. The Farm Poundage Quota Revisions Act of 1990 as amended section 319(g) of the 1938 Act to provide that effective for the 1991 crop, burley tobacco quota may be voluntarily sold from one farm to another farm in the same county if the buyer, who is an active tobacco producer, is not buying an amount larger than 30 percent of the existing quota for the buyer's farm, or 20,000 pounds whichever is greater. The term "active burley tobacco producer" means any person who shared in the risk of producing a crop of burley tobacco in not less than one of the three years preceding the year involved, or any person who intends to become an active burley tobacco producer in the current year by sharing in the risk of producing the crop and who provides a certification of such intentions on a form approved by the Deputy Administrator. The term "shared in the risk of production" is currently defined at 7 CFR 723.104. Section 319(g) further provides that no sale of burley tobacco quota from a farm shall be permitted if any sale of quota to the same farm has been made within the three immediate preceding years. The marketing quota determined by any farm subsequent to each sale shall not exceed an amount determined by multiplying the farm yield by 50 percent of the acreage of cropland in the farm. To be effective for the current crop year a record of the sale shall be filed with the county committee not later than July 1 of the crop year.

The proposed rule provides that once a burley tobacco quota is purchased under the provisions of section 319(g) of the 1938 Act, the purchaser must share, for a period of three years, in the risk of production of tobacco produced under the quota or the quota shall be sold or forfeited in accordance with the provisions at 7 CFR 723.219.

(2) *Loss of burley tobacco quota for nonuse.* Section 319(h) of the 1938 Act provides that if burley tobacco quota established for a farm will be reduced to zero effective for the 1994 crop year on any farm that does not have burley tobacco planted or considered planted credit in two of the three immediately preceding years. Currently a farm can retain its quota if the farm has planted or considered planted credit in one of the five immediately preceding years.

(3) *Increase burley tobacco lease limitation.* Section 319(g) of the 1938 Act provides that the amount of quota that may be leased and transferred to any farm be increased from 15,000 pounds to an amount not more than 30,000 pounds.

(4) *Cross county leasing of burley tobacco quota in the State of Tennessee.* Section 319 of the 1938 Act is amended to permit the lease and transfer of burley tobacco quota from one farm to any other farm within the State of Tennessee. To be effective for the 1991 and subsequent crop years, burley tobacco producers within the State must approve such lease and transfer by a State-wide referendum. Currently, burley tobacco quota can be transferred by lease to only farms within the county unless the farm is eligible to lease and transfer quota after July 1 under the disaster lease and transfer provisions at 7 CFR 723.216(g).

(5) *Restriction on the division of burley tobacco quotas through reconstitutions.* The Farm Poundage Quota Revisions Act of 1990 amended section 379 of the 1938 Act to provide, effective beginning with the 1991 crop year, when a farm is divided through reconstitution, the burley tobacco farm poundage quota which transfers with the divided land shall not be less than 1,000 pounds. The law exempts the 1,000 pounds limitation when the reconstitution of the farm is among immediate family members or pursuant to probate proceedings.

The intent of the law is to stop the proliferation of farms with a small amount of burley tobacco quota. Approximately 146,000, or 46 percent of burley tobacco farms, have a quota that is less than 1,000 pounds. This has occurred, in part, because land with burley quota is being subdivided into small parcels which receive a small amount of quota. This large number of small quota farms has contributed to the under production of the national marketing quota in recent years. For instance, in 1989 only 75 percent of the national quota was marketed by producers. In 1988, 84 percent of the national quota was marketed.

The law does not specify the disposition of that quota which is less than 1,000 pounds or the manner in which farms must comply with the 1,000 pounds minimum quota. As a means for implementing the law, consideration was given to reducing the quota to zero on all farms that would receive less than 1,000 pounds. Reduced the quota to zero would have an adverse effect on land values and the owners of land with burley quota. There was also concern that the quota would leave the county and State where it was originally established. Also there was no provision for persons who acquire land with a quota of less than 1,000 pounds to retain this quota by combining the land with other land that they own or to purchase additional quota that would result in the farm having at least 1,000 pounds of quota. Because of these adverse effects, consideration was given to a method that would provide the owners of divided farms with less than 1,000 pounds of quota the opportunity to take action that would comply with the law.

The proposed rule provides that owners of divided farms with less than 1,000 pounds of burley tobacco quota can sell the quota, purchase additional quota to meet the 1,000 pounds minimum, or combine the divided farm with other land owned by the same person so that the combined farm has at least 1,000 pounds of quota. The owners of divided farms in this situation must take action to comply with the law by July 1 of the current crop year or the quota is reduced to zero.

By having the opportunity to sell the quota, landowners can receive financial benefit from the sale. Also, quota transferred by sale will remain in the county where it was originally established. Burley tobacco producers have the opportunity to purchase additional quota so that the farm will have at least 1,000 pounds. The owners can also combine the divided farm with other land that they own so that the combined farm has at least 1,000 pounds of quota.

(6) *Determining preliminary burley tobacco quota.* Current regulations provide that the preliminary farm marketing quota will not be established for a farm when the farm or all the cropland has gone out of agricultural production and eminent domain procedure does not apply. The term "agricultural production" means cropland that is no longer suitable for the production of crops due to growth of trees and brush. Under the current regulations, burley tobacco quotas have been permitted to remain on these farms. Producers have been permitted to lease and transfer the quotas to other farms to receive planted credit for history purposes and maintain the quota on the farm.

The proposed rule would require the preliminary farm marketing quota to be zero if the county committee determines that there is no cropland on the farm suitable for the production of a crop.

(7) *Burley and flue-cured tobacco dealer registration.* The current

regulations provide that each person who expects to purchase and resale burley and flue-cured tobacco during a marketing year shall annually register with the US Department of Agriculture for the respective marketing year. Dealer applications are approved by the State ASC committee in the State in which the application is filed.

There have been reported incidences of persons filing applications for and receiving dealer identification cards that are not bona fide tobacco dealers. OIG investigations have disclosed that some dealers that obtain dealer identification cards do not file reports and maintain records that are required by regulations. There have been incidences of dealers that never file reports of purchases, however, other dealers show large amounts of tobacco purchased from such dealers. Each dealer purchases and resales of tobacco are reconciled at the end of each marketing year. When a dealer's resales of tobacco exceeds the pounds purchased, the dealer is subject to a marketing quota penalty for each pound of excess resales. Indications are that persons are obtaining dealers cards with no intentions of actually dealing in the purchase and resale of tobacco but are allowing their dealer card to be used by other dealers to report purchases of tobacco that are only paper transactions and no actual tobacco changed hands. In this way dealers can hide excess resales thereby avoiding the penalty due.

The proposed rule would provide the State ASC committee the authority to not approve a dealer application if the State ASC committee has reason to doubt that the application is by a bona fide dealer or doubt that the applicant has the intention to become a bona fide dealer until such time as the applicant furnish information to substantiate to the satisfaction of the State ASC committee that such dealer operation is bona fide.

(8) *Dealer records and reports.* Section 373 of the 1938 Act provides that the Secretary may require persons engaged in the business of purchasing tobacco to report to the Secretary such information and keep such records as the Secretary finds necessary to carry out the provisions of the tobacco program as set forth in the 1938 Act.

Sections 311–314 of the 1938 Act provides the Secretary with the authority to regulate producers, warehouse operators, and dealers as the Secretary finds necessary to implement acreage allotments and marketing quotas in the tobacco program.

State and County Agricultural Stabilization and Conservation Service offices report that individuals who deal in purchasing and reselling of tobacco have failed to provide complete and timely reports of all tobacco purchases and resales, and such dealers have not provided timely access to tobacco for the purpose of inspection as provided for in the regulations currently in effect. Regulations require marketing penalties when resales of tobacco under quota exceed purchases of such tobacco. Dealers are able to avoid or delay payment of marketing penalties by delaying the reporting and inspection requirements.

Current tobacco regulations provide that all purchases and resales of flue-cured or burley tobacco similarly shall be recorded on ASCS Form MQ–79. An ASCS Form MQ–79 showing "final" shall be submitted at the end of the dealer's annual marketing operation, but not later than December 15 for flue-cured tobacco dealers and April 1 for burley tobacco dealers. Additionally, dealers must report on the final ASCS Form MQ–79 any tobacco on hand and the location of such tobacco. Such tobarro must be weighed and made available to ASCS officials for eventual inspection and reinspection. Under the proposed rule, the current deadline dates for dealer end-of-marketing year reporting requirements would be January 15 for flue-cured and remains at April 1 for burley tobacco dealers. If the dealer has not complied by such date, ASCS will immediately issue the dealer a notice of reporting noncompliance. The dealer will be given 15 days to comply or show cause why compliance is not feasible. After 15 days from the date of the notice, should the dealer still not have complied with reporting requirements, the dealer will not be eligible to receive a MQ–79–2 (dealer identification card), to purchase and resale tobacco in the following marketing year. All appeals with respect to this determination must be filed in accordance with 7 CFR part 780.

(9) *Sharing in the risk of production.* Section 316B(a) of the 1938 Act provides for the mandatory sale of certain burley tobacco marketing quotas.

Section 316B(c)(1)(B) provides that any person who purchases burley tobacco quota under subsection (a) of this section and fails for a five year period to share in the risk of producing burley tobacco under such quota shall sell the purchased quota or the quota shall be subject to forfeiture.

Section 316(g) of the 1938 Act provides for the voluntary sale of flue-cured tobacco allotments and quotas. This section provides that a person that purchases flue-cured allotment and quota shall share in the risk of production of such quota or such quota shall be subject to forfeiture or sale, however, no time limitation on sharing in the risk of production is specified in the law.

By regulations issued by the Department, a five year period for sharing in the risk of production has been used for both flue-cured and burley tobacco. The proposed rule would amend the current regulations to reduce from five years to three years the period for sharing in the risk of production of flue-cured tobacco quota purchased under the provisions of section 316(g) of the 1938 Act. The three year period for sharing in the risk of production of purchased allotment and quota should be sufficient to prevent speculation (buying and selling for a profit) of flue-cured tobacco quota.

(10) *Tobacco marketing assessments.* The Omnibus Budget Reconciliation Act of 1990 requires, effective for the 1991 through 1995 crops of tobacco for which price support is available, that both the producer and the purchaser of such tobacco marketed shall each remit to the Commodity Credit Corporation (CCC) a nonrefundable marketing assessment in an amount equal to .5 percent of the national price support level for each such crop. The CCC will determine and announce the marketing assessment for each of the 1991 through 1995 crops of the respective kinds of tobacco. The proposed rule will provide minor changes in the regulations with respect to tobacco dealers reporting and remitting tobacco marketing assessments.

(11) *Scheme and device.* Current regulations do not provide a scheme and device provision with respect to tobacco producers, warehouse operators, dealers, and other persons who intentionally act to defeat the purpose of the tobacco program regulations. The proposed rule would provide for assessing penalties in such a manner as will correct and nullify any action in which a person or entity adopted any scheme or device to defeat the purpose of the regulations.

(12) *Other minor revisions effecting flue-cured and burley tobacco warehouse operators and dealers.* The proposed rule amends the regulations at 723.406 to provide for the inspection by an ASCS representative of flue-cured and burley tobacco purchased by warehouse operators and dealers that is classified as not in the form normally marketed by producers. Also, the proposed rule amends the regulations at § 723.410 to clarify warehouse operators and dealers responsibility for the collection of penalties due on nonauction purchases of tobacco. These

changes are necessary to strengthen the administration of the flue-cured and burley tobacco programs.

**List of Subjects in 7 CFR Part 723**

Acreage allotment, Marketing quotas, Reporting and recordkeeping requirements, Tobacco.

**Proposed Rule**

For the reasons set forth in the preamble, chapter VII, title 7, part 723 is amended as follows:

## PART 723—TOBACCO

1. The authority for part 723 is revised to read as follows:

**Authority:** 7 U.S.C. 1301, 1311, 1312, 1313, 1314, 1314–1, 1314b, 1314b–1, 1314c, 1314–d, 1314–f, 1314–h, 1315, 1316, 1363, 1372–75, 1377, 1378, 1379, 1421, 1445, 1445–1, and 1445–2.

2. Section 723.104 is amended by amending paragraph (b) to remove the terms "Active burley tobacco producer" and "active flue-cured tobacco producer" and add new terms "Active burley and flue-cured tobacco producer" and "Damaged tobacco". The definition of the term "Base period" is revised to read as follows:

**§ 723.104 Definitions.**

* * * * *

(b) *Terms.* * * *

*Active burley and flue-cured tobacco producer.* (1) Any person who shared in the risk of producing a crop of burley or flue-cured tobacco in at least one of the three years preceding the current year, or

(2) Any person who intends to become a burley or flue-cured tobacco producer in the current year by sharing in the risk of producing the crop and who provides a certification of such intentions on a form approved by the Deputy Administrator.

* * * * *

*Base period.* The 5 calendar years immediately preceding the year for which farm acreage allotments or marketing quotas are currently being established. For burley tobacco marketing quotas established effective for the 1994 and subsequent crop years, the base period shall be the 3 calendar years immediately preceding the year for which farm marketing quotas are currently being established. For all other kinds of tobacco the five year base period shall remain in effect.

* * * * *

*Damaged tobacco.* Any tobacco that is offered for sale at nonauction that has suffered a loss of value due to:

(1) Fire, smoke, water or other natural causes or;

(2) Deterioration resulting from aging such as rot, separation of leaves from stems, or other conditions that would cause such tobacco to be distinguishable different from that normally marketed in trade channels.

* * * * *

3. Section 723.201 is amended by revising paragraph (b) by adding (b)(5) to read as follows:

**§ 723.201 Determination of preliminary farm acreage allotments and preliminary farm marketing quotas**

* * * * *

(b) * * *

(5) All the cropland on the farm has been determined by the county ASC committee to be no longer suitable for the production of a crop and provisions of part 704 of this title does not apply.

* * * *

4. Section 723.208 is amended by revising paragraph (b) to read as follows:

**§ 723.208 Determination of acreage allotments, marketing quotas and yields for divided farms.**

(a) * * *

(b) *Burley tobacco.*—(1) *Division of farm marketing quota.* The farm marketing quota for the divided farm shall be divided according to part 719 of this title. Other basic data shall be apportioned among the resulting farms in the same proportion as the farm marketing quota.

(2) *Divided burley tobacco farms with less than 1,000 pounds of quota.* If a farm is divided through reconstitution and the burley tobacco poundage quota which transfers with the resulting farms receive less than 1,000 pounds of quota, the owners of such farms shall take action by July 1 of the current crop year to increase the quota to a minimum of 1,000 pounds or the quota shall be reduced to zero. The quota on the divided farms may be increased by:

(i) Combining the farm having less than 1,000 pounds with other land owned by the same person so that the combined farm has a minimum of 1,000 pounds of farm marketing quota, or

(ii) Purchasing a sufficient amount of quota so that the farm has at least 1,000 pounds of quota.

(3) *Effective quota.* For the current crop year, the effective farm marketing quota on the divided farms shall be zero for leasing and planting purposes until the farm complies with the 1,000 pounds minimum quota.

(4) *Sale of quota.* If the owners of the divided farms fail to increase the quota on such farms to a minimum of 1,000 pounds, the owner may sell the quota by July 1 of the current crop year.

(5) *Reduction of quota.* The county ASC committee shall reduce the quota to zero on the divided farms if the owners of such farms fail to take action as provided in paragraph (b)(2) and (4) of this section.

(6) *Farm exemptions.* Farms exempt from the 1,000 pounds minimum quota limitation are farm divisions:

(i) Among immediate family members.

(ii) Through probate or,

(iii) Where common ownership tracts are divided by the contribution method according to part 719 of this title or,

(iv) When the buyer and purchaser can furnish proof acceptable to the county ASC committee in accordance with guidelines provided by the Deputy Administrator that the transaction was finalized prior to November 15, 1990.

* * * * *

5. Section 723.216 is amended as follows:

A. By revising the introductory text of paragraph (a) and paragraphs (a)(1) (i), (ii), and (iii), and (e)(5)(iv);

B. By adding paragraph (e)(5)(ix);

C. By revising paragraphs (e)(6)(i), (e)(7)(i) introductory text and (e)(7)(iii);

D. By adding paragraphs (e)(7) (vii) and (viii);

E. By revising paragraph (e)(8)(iii) and adding paragraph (e)(8)(v);

F. By revising paragraph (f)(6)(i) introductory text and paragraph (f)(7)(iii).

The revised and added text reads as set forth below.

**§ 723.216 Transfer of tobacco acreage allotments or marketing quota by sale or lease.**

(a) *Owners of life estates.* Except with respect to cigar binder (types 54 and 55) tobacco, tobacco acreage allotments or marketing quotas may be transferred between eligible farms in accordance with the provisions of this section. A person who owns a life estate in all or part of a farm shall be considered an owner who possesses all rights to sell, lease, or otherwise transfer tobacco acreage allotments or marketing quota as permitted in this section irrespective of the party who possesses a future interest in the farm.

(1) *Types of Transfers.* * * *

(i) Cigar-filler (type 46) and cigar-filler (types 42, 43, and 44), tobacco transfers may be by lease only.

(ii) Flue-cured tobacco, transfers may be by:

(a) Sale, or

(B) Lease under certain natural disaster conditions provided in this section.

(iii) Burley tobacco, transfers may be by:

(A) Lease
(B) Owner, or
(C) *Sale.*

* * * * *

(e) * * *
(5) * * *

(iv) *Filed on or before July 1.* Unless the receiving farm is administratively located in the same county as the transferring farm. *Provided,* that for 1991 and subsequent crops burley tobacco producers in the State of Tennessee shall be permitted to lease and transfer burley tobacco quota to any other farm in the State if a majority of active burley tobacco producers within the state approve such lease and transfer in a State-wide referendum to be conducted prior to July 1, 1991.

* * * * *

(ix) *Divided farms with less than 1,000 pounds of quota.* If the farm has been divided by reconstitution and the divided farm has a farm marketing quota of less than 1,000 pounds subject to being reduced to zero pursuant to § 723.208(b) of this part.

(6) *Receiving farm restrictions.* * * *

(i) *Filed on or before July 1.* If the transfer agreement is filed on or before July 1:

(A) Unless the receiving farm is administratively located in the county as the transferring farm. *Provided,* that the provisions of paragraph (e)(5)(iv) of this section are not applicable.

(B) If the pounds of quota being transferred to the farm exceed the smaller of 30,000 pounds or the difference between the farm marketing quota and one-half the result obtained by multiplying the acres of cropland on the farm by the farm yield.

* * * * *

(7) *Selling farm restrictions.* * * *

(i) *Previously purchased and/or reallocated quota.* If the farm marketing quota was brought and/or reallocated from quota previously forfeited as provided in § 723.219(i)(1) and the purchase and/or reallocation became effective within the three preceding years; if the purchased and/or reallocated quota was obtained from quota purchased and/or reallocated as provided in paragraph (b) of this section within the four preceding years. However, this provision shall not be applicable if:

* * * * *

(iii) *Pounds of sale.* The pounds transferred by sale shall be based on part or all of the farm poundage quota.

* * * * *

(vii) *Consent of lien holder.* If the farm is subject to a lien unless the lien holder agrees in writing to the transfer. However, consent of a lien holder is not required for a transfer of the pounds of quota for which forfeiture is required in accordance with the provisions of § 723.219 of this part.

(viii) *Quota is subject to an approved Conservation Reserve Program Contract.* If the quota has been reduced because of an approved Conservation Reserve Program contract according to part 704 of this title unless forfeiture is otherwise required.

* * * * *

(8) * * *

(iii) *Quota previously sold.* If quota was sold from the farm in the current or either of the two preceding years.

* * * * *

(v) *Quota limitation.* If the sum of the pounds of quota being transferred in the current year exceeds the larger of:

(A) 30 percent of the receiving farm's existing quota, or (B) 20,000 pounds.

* * * * *

(f) * * *
(6) * * *

(i) *Previous purchased and/or reallocated quota.* If a farm marketing quota includes quota that was purchased and/or reallocated from the quota which has been forfeited and the purchase and/or reallocation became effective in the three preceding years. However, this provision shall not be applicable if:

* * * * *

(7) * * *

(iii) *Quota previously sold.* If the farm owner sold quota from a farm during the current or any of the two preceding years.

* * * * *

6. Section 723.219 is amended by revising paragraphs (c) (1) and (2), adding paragraph (d)(3)(iii), and revising paragraph (h) to read as follows:

**§ 723.219 Forfeiture of burley tobacco marketing quota.**

* * * * *

(c) *Buyers of quota fails to share in the risk of production—(1) Forfeiture required.* If any person buys burley tobacco quota and such person fails to share in the risk of producing the tobacco which was planted subject to such quota during any of the 3 crop years beginning with the crop year for which the purchase became effective such person shall forfeit the purchased quota if it is not sold on or before December 31 of the year after the crop year in which such crop was planted. However, any purchaser or subsequent purchaser of quota required to be sold under the mandatory sale to prevent forfeiture, provisions of paragraph (b) of this section shall be required to share in the risk of production of such quota for five crop years beginning with the crop year for which the purchase became effective.

(2) Failure to utilize purchased quota for the production of tobacco shall not result in the forfeiture of such quota, but the three year period and the five year period which is specified in paragraph (c)(1) of this section shall be extended 1 year for each year for which the quota is not utilized.

* * * * *

(d) * * *
(3) * * *

(iii) The affected person knowingly failed to take steps to prevent forfeiture of burley tobacco quota.

* * * * *

(h) *Forfeiture of reallocated quota.* Any burley tobacco quota which is reallocated in accordance with the provisions of this section shall be forfeited if the applicant to whom the quota is reallocated fails to share in the risk of producing a crop of tobacco which is subject to such quota during any of the 3 years beginning with the crop year during which the quota is reallocated. The amount of farm marketing quota which must be forfeited shall be determined in the same manner which is specified in paragraph (c)(4) of this section with respect to the forfeiture of purchased quota. Any forfeiture of quota shall occur on December 1 of the year in which the applicant fails to share in the risk of production of tobacco which is produced subject to such quota. While the failure to utilize a quota shall not subject the quota to forfeiture, the 3 year period which is specified in this paragraph shall be extended by 1 year for each year in which the quota is not utilized.

* * * * *

7. Section 723.220 is amended by revising paragraphs (e) (1) and (2) and (k) to read as follows:

**§ 723.220 Forfeiture of flue-cured tobacco acreage allotment and marketing quota.**

* * * * *

(e) *Buyers of allotment fails to share in the risk of production*—(1) *Forfeiture required.* If any person buys flue-cured acreage allotment and quota and such person fails to share in the risk of producing the tobacco which was planted subject to such quota during any of the three crop years beginning with the crop year for which the purchase became effective such person shall forfeit the purchased quota if it is not sold on or before December 31 of the year after the crop year in which such crop was planted.

(2) *Failure to utilize purchased allotment and quota.* Failure to utilize purchased allotment and quota for the production of tobacco shall not result in the forfeiture of such quota, but the 3 year period which is specified in paragraph (e)(1) of this section shall be extended 1 year for each year for which the quota is not utilized.

* * * * *

(k) *Forfeiture of reallocated allotment and quota.* Allotment and quota which is reallocated in accordance with the provisions of this section shall be forfeited if the applicant to whom the quota is reallocated fails to share in the risk of producing a crop of tobacco which is subject to such quota during any of the 3 years beginning with the crop year during which the quota is reallocated. The amount of farm marketing quota which must be forfeited shall be determined in the same manner which is specified in paragraph (e)(4) of this section with respect to the forfeiture of purchased quota. Any forfeiture of quota shall occur on December 1 of the year in which the applicant fails to share in the risk of production of tobacco which is produced subject to such quota. While the failure to utilize a quota shall not subject the quota to forfeiture, the 3 year period which is specified in this paragraph shall be extended by 1 year for each year in which the quota is not utilized.

* * * * *

8. Section 723.401 is amended by adding paragraph (c) to read as follows:

**§ 723.401 Registration of burley and flue-cured tobacco dealers and warehouse operators.**

* * * * *

(c) *Disapproval of request for dealer card.* If the State ASC committee in the State in which the application is made has reasons to doubt that the applicant is a bonafide dealer or intends to become a bonafide dealer, the application may be disapprove until such time as the applicant furnishes information to substantiate to the satisfaction of the State ASC committee that such applicant's operation is bonafide.

9. Section 723.404 is amended by revising paragraphs (b)(1)(viii), (c)(2)(iii) and (c)(3)(ii), and the introductory text of paragraph (d)(5) and paragraphs (d)(6) and (8) and adding paragraph (d)(9) to read as follows:

**§ 723.404 Dealers records and reports, excluding cigar tobacco buyers.**

* * * * *

(b) * * *

(1) * * *

(viii) The amounts remitted for the No Net Cost and the Tobacco Marketing Assessments.

* * * * *

(c) * * *

(2) * * *

(iii) For nonauction purchases which are made by the dealer from producers, the dealer shall remit the producer's and the dealer's share of the No Net Cost and Tobacco Marketing Assessments as provided in part 1464 of this title. The dealer may deduct the producer's share of each assessment from the price paid for the tobacco. However, the No Net Cost Assessment shall not be remitted from a producer who identifies the tobacco for marketing with a marketing card which has zero pounds as the 103 percent entry on the marketing card. A marketing penalty at the full rate shall be collected on the marketings identified by such card. The amount of the No Net Cost and the Tobacco Marketing Assessments which is applicable to tobacco marketed during each marketing year will be the amount per pound which is approved and announced by the Secretary.

(3) * * *

(ii) For nonauction purchases which are made by the dealer from producers, the dealer shall remit the producer's and the dealer's share of the No Net Cost and Tobacco Marketing Assessments as provided in part 1464 of this title. The dealer may deduct the producer's share of each assessment from the price paid for the tobacco. However, the No Net Cost Assessment shall not be remitted from a producer if the marketing card used to identify a kind of tobacco shows a converted penalty rate of 100 percent. A marketing penalty at the full rate shall be collected on the marketings identified by such card. the amount of the No Net Cost and the Tobacco Marketing Assessments which is applicable for each kind of tobacco marketed during each marketing year will be the amount per pound which is approved and announced by the Secretary.

(d) * * *

(5) At the end of the dealer's marketing operation, but not later than April 1 for tobacco other than flue-cured and January 15 for flue-cured tobacco, such dealer shall for each kind of tobacco:

* * * * *

(6) Notwithstanding the provisions of paragraph (d)(5) of this section, any dealer having tobacco transactions after January 15 for flue-cured and April 1 for other than flue-cured shall make reports on Form MQ–79 at the end of each week, as provided in paragraph (d)(3) of this section.

* * * * *

(8) In addition to forms MQ–79 and MQ–72–2, if applicable, form MQ–79 (Supplemental) shall be executed to record information relating to each nonauction purchase of tobacco for which the No Net Cost and Tobacco Marketing Assessments are due from producers and dealers. The form MQ–79 (Supplemental) shall be forwarded to the State ASCS office at the same time as the purchase is reported on the MQ–79. A check, draft, or money order in the amount of the collections recorded on form MQ–79 (Supplemental) and made payable to Commodity Credit Corporation shall be submitted to the State ASCS office along with the forms MQ–79 and MQ–79 (Supplemental).

(9) Any flue-cured or burley dealer who fails to comply with all provisions of paragraph (d)(5) of this section by January 15 for flue-cured and April 1 for burley tobacco will be issued a notice of noncompliance and the dealer shall be given 15 days to either comply or show cause why compliance is not feasible. Failure to complete all required actions within 15 days from date of such notice shall result in such dealer not being issued a MQ–79–2 for the marketing year immediately following the marketing year in which the dealer failed to conform with the deadline of January 15 for flue-cured April 1 for burley tobacco.

* * * * *

10. Section 723.406 is amended by adding paragraph (e) to read as follows:

**§ 723.406 Provisions applicable to damaged tobacco or to purchases of tobacco from processors or manufactures.**

* * * * *

(e) *Dealer records and reports.* (1) Any dealer, warehouse operator or other persons who purchased tobacco classified as not in the form normally marketed by producers shall keep such records as will enable such person to report to the State ASCS office the following:

(i) Name of seller, pounds purchased, and date of purchase.

(ii) The disposition of such tobacco including name of buyer, pounds sold, date of sale.

(2) Upon request by the State ASCS office such person shall provide for the inspection and weighting of the tobacco to be witnessed by an ASCS representative.

11. Section 723.407 paragraphs (b)(7), (d), and (f)(3) are revised to read as follows:

**§ 723.407 Cigar tobacco buyer's records and reports.**

* * * * *

(b) * * *

(7) The amounts remitted for the No Net Cost and Tobacco Marketing Assessments.

* * * * *

(d) The dealer shall remit the producer's and the dealer's share of the No Net Cost and Tobacco Marketing Assessments as provided in part 1464 of this title. The dealer may deduct the producer's share of each assessment from the price paid for the tobacco. The No Net Cost Assessment shall not be collected from a producer who identifies the tobacco for marketing with a marketing card which has a converted penalty rate of 100 percent on the marketing card. A marketing penalty at the full rate shall be collected on the marketings identified by such card. The amount of the No Net Cost and Tobacco Marketing Assessments which is applicable to tobacco marketed during each marketing year will be the amount per pound which is approved and announced by the Secretary.

* * * * *

(f) * * *

(3) In addition to forms MQ–79 and MQ–72–2, if applicable, form MQ–79 (Supplemental) shall be executed to record information relating to each nonauction purchase of tobacco for which the No Net Cost and Tobacco Marketing Assessments are due from producers and dealers. The form MQ–79 (Supplemental) shall be forwarded to the State ASCS office at the same time as the purchase is reported on the MQ–79. A check, draft, or money order in the amount of the collections recorded on form MQ–79 (Supplemental) and made payable to Commodity Credit Corporation shall be submitted to the State ASCS office along with the forms MQ–79 and MQ–79 (Supplemental).

12. Section 723.409 is amended by adding paragraph (h) to read as follows:

**§ 723.409 Producer penalties, false identification and related issues.**

* * * * *

(h) *Misrepresentation and scheme or devise.* (1) A producer who is determined by ASCS to have erroneously represented any fact affecting a program determination shall not be entitled to price support with respect to which such representation was made, and shall refund to CCC all payments received by the producer with respect to such farm and the tobacco program.

(2) A producer who is determined by ASCS to have knowingly:

(i) Adopted any scheme or device which tends to defeat the purpose of the tobacco program,

(ii) Made any fraudulent representation, or

(iii) Misrepresented any fact affecting a program determination in addition to any other penalties prescribed in this part shall not be entitled to price support with respect to which such representations were made, and shall refund to CCC all payments received by such producer with repsect to all farms.

13. Section 723.410 is amended by revising paragraph (g) to read as follows:

**§ 723.410 Penalties considered to be due from warehouse operators, dealer, buyers and others excluding producers.**

* * * * *

(g) *Dealer tobacco-burley and flue-cured.* The burley or flue-cured tobacco resales by a dealer (as shown or due to be shown on Form MQ–79), which are in excess of such dealer's total prior purchases of the respective kind of tobacco shall be considered to be a marketing of excess tobacco and peanlty thereon shall be due at the time the marketing takes place which results in the excess. If the resale which results in penalty being due is made at auction, the warehosue shall deduct the penalty from the proceeds of the sale and shall remit the penalty to the marketing recorder. If the resale which results in penalty being due is made at nonauction, the purchaser shall deduct the penalty from the proceeds of the sale and shall remit the penalty to the applicable State ASCS office.

* * * * *

14. Section 723.414 is amended by adding paragraph (c) to read as follows:

**§ 723.414 Failure to keep records and make reports or making false report or record.**

* * * * *

(c) *Misrepresentation and scheme or device.* A warehouse operator or dealer who is deterined by ASCS to have knowingly:

(1) Adopted any scheme or device which tends to defeat the purpose of the tobacco program,

(2) Made any fraudulent representation,

(3) Misused a MQ–76 or MQ–79–2, or

(4) Sold excess tobacco, shall pay a marketing quota penalty as prescribed in this part.

Signed in Washington DC, on March 8, 1991.

**Keith D. Bjerke,**

*Administrator, Agricultural Stabilization and Conservation Service.*

[FR Doc. 91–6025 Filed 3–13–91; 8:45 am]

BILLING CODE 3410–05–M

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## Agricultural Marketing Service

## 7 CFR Part 946

**[Docket No. FV–91–255]**

## Irish Potatoes Grown in Washington; Expenses and Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 946 for the 1991–92 fiscal period. Authorization of this budget would permit the State of Washington Potato Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

**DATES:** Comments must be received by April 15, 1991.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Caroline C. Thorpe, Marketing Order, Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC, 20090–6456, telephone 202–447–2020.

**SUPPLEMENTARY INFORMATION:** This rule is proposed under Marketing Agreement No. 113 and Order No. 946, both as amended (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order

12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 45 handlers of Washington potatoes under this marketing order, and approximately 385 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Washington potato producers and handlers may be classified as small entities.

The budget of expenses for the 1991–92 fiscal year was prepared by the State of Washington Potato Committee (committee), the agency responsible for local administration of the order, and submitted to the Secretary of Agriculture for approval. The members of the committee are producers and handlers of Washington potatoes. They are familiar with the committee's needs and with the costs of goods and services in their local area and are in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of Washington potatoes. Because that rate is applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expenses.

The committee met February 7, 1991, and unanimously recommended a budget for the 1991–92 fiscal year of $35,000. Also recommended was an assessment rate of $0.005 per hundredweight (cwt.) of potatoes. The new budget includes a decrease of $1,100 in compliance audits to be equally offset by increases in office supplies, postage, audit, salaries, and salary expenses. All other budget categories remain the same.

The committee recommended an assessment rate of $.005 per cwt., which is $.001 more than last year's rate. The increased assessment rate would yield $30,000 in assessment income when applied to anticipated fresh market shipments of six million cwt., down from last year's shipments of just over 7 million cwt. Total assessment income plus $5,000 from the committee's authorized reserve, would be adequate to cover budgeted expenses of $35,000. Estimated reserves at the beginning of the year will be $15,000.

While this action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the order. Therefore, the Administrator of the AMS has determined that this proposed action would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

**List of Subjects in 7 CFR Part 946**

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, it is proposed that 7 CFR part 946 be amended as follows:

## PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation of 7 CFR part 946 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 946.244 is added to read as follows:

**§ 946.244 Expenses and assessment rate.**

Expenses of $35,000 by the State of Washington Potato Committee are authorized, and an assessment rate of $0.005 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1992. Unexpended funds may be carried over as a reserve.

Dated: March 8, 1991.

William J. Doyle,

*Associate Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 91–5988 Filed 3–13–91; 8:45 am]

BILLING CODE 3410–02–M

**Rural Electrification Administration**

**7 CFR Part 1755**

**RIN 0572–AA20**

## Telecommunications Standards and Specifications for Materials, Equipment and Construction; REA Form 525–Central Office Equipment Contract (Including Installation)

**AGENCY:** Rural Electrification Administration, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Rural Electrification Administration (REA) proposes to amend 7 CFR 1755, Telecommunications Standards and Specifications for Materials, Equipment and Construction, to announce a general revision of REA Contract Form 525, Central Office Equipment Contract (Including Installation). A 7 CFR part 1762 proposed rule was published in the **Federal Register** (54 FR 43429) on October 25, 1989, announcing that REA was proposing to revise REA Form 525 to update the terms and conditions to reflect the current technological and market environment. Public comments and suggestions were invited. Since that time part 1762 has been incorporated into part 1755.

Comments and suggestions were received from four major manufacturers of central office equipment and three consulting engineering firms. Many useful comments and suggestions were received and many of them have been incorporated into the proposed revised Form 525 Contract.

The last revision to the Form 525 Contract was September 1966. Since that date, significant changes have been made in the telephone industry. The profound advancement in central office equipment technology has made possible many new services on a cost effective basis. Divestiture and competition, legislation and regulation have brought about many changes in the conduct of telecommunications business. There is a need to revise the Form 525 Contract to incorporate these changes into the Central Office Equipment Contract. The main changes to the Contract proposed are new requirements (1) to provide for a complement of spare parts, (2) to provide a software license, (3) for patent, copyright, and trademark infringement, (4) for consequential damages, and (5) equal employment opportunities, and to revise and update provisions for (1) delivery and installation of equipment, (2) inspection and testing of the completed

installations, (3) payments to the contractor, (4) insurance, (5) liquidated damages, and (6) completion of the project. This action will make it possible for REA telephone borrowers to continue to provide their subscribers with the most modern and efficient telephone service.

**DATES:** Public comments must be received by REA no later than May 13, 1991.

**ADDRESSES:** Submit written comments to Donald M. Van Bellinger, Director, Telecommunications Staff Division, Rural Electrification Administration, room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500. Copies of the document are available upon request from the above address. All written submissions made pursuant to this action will be made available for public inspection during regular business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Dean A. Dion, Chief, Central Office Equipment Branch, Telecommunications Staff Division, Rural Electrification Administration, Washington, DC 20250–1500, telephone (202) 382–8671.

**SUPPLEMENTARY INFORMATION:** Comments and suggestions received in response to the October 25, 1989, proposed rule announcement for the proposed revision of REA Form 525 are of such pertinence that REA has decided that they should be incorporated into the document. REA has determined that it will again publish the rule, as revised, in proposed form, with a 60-day comment period. This rule is issued in conformity with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this rule has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq. (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the final rule related notice to 7 CFR part 3015, subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

The reporting and recordkeeping provisions of the Paperwork Reduction Act of 1960 (44 U.S.C. 3507 et seq.) contained in this rule have been approved by the Office of Management and Budget (OMB) under clearance number 0572–0062.

## Background

REA has issued a series of 7 CFR chapter XVII parts which serve to implement the policies, procedures, and requirements for administering its loan and loan guarantee programs and the loan documents and security instruments which provide for and secure REA financing. The proposed revision to 7 CFR part 1755 announces revisions of the Central Office Equipment Contract (Including Installation), REA Form 525. The 7 CFR part 1755 also describes where copies of the contract may be obtained and the price per copy, where applicable. REA telephone borrowers are required to use the Form 525 Contract where major central office facilities are being procured and installed under contract. The present REA Form 525 has become outdated due to technological advancements and other reasons. Advanced technology and equipment concepts have introduced new issues. Contract terms and obligations need to be modified and updated to more accurately reflect present business practices. Some representative issues addressed in updating this contract are: expansion of patent infringement protection to include copyrights, trademarks, etc.; software right-to-use licensing terms; warranty coverage; use of information; consequential damages; delays in project; liquidated damages; bonding and insurance; independent contractor provisions; and support of discontinued products. All these proposed additions and changes need to be made so that REA telephone borrowers can continue to provide their subscribers with the most up-to-date and efficient telephone service.

## Comments

Public comments and recommendations were received from AT&T, Northern Telecom Inc., GPT Stromberg—Carlson, NEC America Inc., American Communications Consultants Inc., Finley Engineering Company Inc., and Ladd Engineering Associates Inc. The comments, recommendations and responses are summarized as follows:

*General Comments*

One respondent commented that several sections of the revised Form 525 require that some things be satisfactory to the owner or the owner and the administrator. The respondent felt that this is an arbitrary, nonlegal, subjective standard.

Response: Changes have been made in the contract to refer to objective standards to assist the owner and/or the administrator in deciding whether something is acceptable. In many cases, acceptance will involve judgement or interpretation of a provision, and the contract must state which party's decisions will be final. A specific comment and response on this matter follows under "Article II."

One respondent commented that all "it" and "its" references to the owner and bidder should be changed to read "his/her."

Response: The personal pronoun "it" was used to eliminate references to gender.

One respondent commented that there are a number of references to days in the Form 525 and asked if these references to days meant calendar days inclusive of weekend and holidays, or working days exclusive of weekends and holidays.

Response: A definition of "days" has been added to Article VI, Section 1, specifying that all references to "days" in the contract shall mean "calendar days."

*Notice and Instructions to Bidders*

One respondent commented that the last sentence on page i suggests that proprietary information may be made public. The respondent proposed that only the information found in article I, section 1, of REA Form 525 be made available to the public.

Response: REA requires that bid results be submitted for review, and this information is available to the public under the Freedom of Information Act. Only pricing information, and special conditions placed on the bid by the Bidder, are required to be submitted to REA (7 CFR part 1753, subpart E). REA recommends that Bidders not provide

unnecessary proprietary information in proposals.

One respondent asked if it would be appropriate to charge the Bidder for a copy of the Specification such as is done with Outside Plant Plans and Specifications.

Response: No charge is made for the plans and specifications because the document is small and not expensive to reproduce, and there are not many prospective bidders in central office equipment purchases.

One respondent commented that in item 3, line 10, the Bidder's Software License must be standard and subject only to acceptance by the Administrator as a pre-condition for bid and cannot be within the discretion of the owner.

Response: 7 CFR 1753.38(c) provides that a software license agreement, accepted by the owner and approved by REA, may become part of the contract. REA Form 525 is written to comply with this regulation.

One respondent recommended that item 3 require all bidders to attend the pre-bid technical session to ensure that all bidders follow the same procedures.

Response: The provision for waiving attendance of prospective bidders has been deleted.

One respondent commented that item 3 requires the owner to attach to the notice a list of information required in the bidder's technical proposals. The respondent asked who determines what is to be included on the list—the owner, REA or both?

Response: Both REA and the owner may require information. REA's requirements are listed in 7 CFR 1753.38(a)(2)(i).

One respondent commented that in item 4 the term "supporting instruments" should be defined or some other word used.

Response: Reference to "supporting instruments" has been deleted.

One respondent commented that for item 4 the owner should be responsible for providing a notice that the State requires a license for bidding, if such a requirement exists.

Response: Since the bidder is the party who ultimately will have to abide by the State's licensing requirements, REA believes it is prudent for the bidder to bear the responsibility of determining whether a license is required for bidding.

One respondent commented that in item 5, line 9, "etc." should be deleted since it is overly broad and inappropriate for a legally binding Public Bid document.

Response: "etc." has been deleted and "codes" has been added.

One respondent commented that in item 7, it would be helpful to the bidder to know where it could obtain a copy of 7 CFR part 1788, subpart C, and what the document is.

Response: The Code of Federal Regulations (CFR) is available at libraries, law offices and by mail by subscription. It is so readily available that REA does not believe additional reference is necessary. For clarity, the title of the CFR has been added.

One respondent commented on item 9, requesting a statement as to what happens if the bidder fails to furnish the requested information.

Response: Failure to provide required information may result in a non-responsive bid. Bids that are not responsive will be rejected by the owner.

One respondent commented on item 11, stating that "minor irregularities" and "minor errors" must be defined.

Response: The definition for the term "Minor errors or irregularities" has been added to section 1, article VI of Form 525.

One respondent commented on item 12, asking if the owner needs a reason to reject any or all proposals even though it reserves the right to do so, and should the bidder be advised of reasons for proposal rejection.

Response: While the notice and instructions to bidders establishes the owners right to reject bids, REA sets forth circumstances for rejection of bids in 7 CFR part 1753.

Two respondents commented on the requirement in item 13 for equipment to be furnished for all central offices and remote switching terminals to be of one and the same basic design.

Response: A primary objective of a contract purchase is to buy equipment that can be maintained and administered easily and efficiently. This provision will assure that the owner only has to accommodate one type of equipment.

*Bidder's Proposal to Engineer, Furnish, Deliver, and Install Equipment, Material and Software*

Two respondents commented on the last paragraph, page 2, asking who has the authority to exclude a proposal from consideration.

Response: 7 CFR 1753.38 gives the owner the right to respond to exceptions taken by bidders at the technical session by modifying the specifications. In subsection 1753.38(a)(2)(iv), REA requires the owner to reject technical proposals that are not responsive, and in subsection 1753.8(a)(10), REA requires rejection of any bid that is not responsive. A "responsive bid" is defined in 1753.2 as "a bid that complies with the requirements of the plans and specifications."

Article I Bid Price

One respondent commented that in section 1, the sixth column should be Completion of Installation, not Completion of the Project, since Completion of the Project is beyond the bidders' control.

Response: Article I, section 1, has been revised substantially to resolve this problem. Several contract milespost events have been redefined and relationships among them have been established. For example, see note 3 in article I, section 1.

One respondent commented that in section 1 the items a, b, c, etc. in column 8 are confusing and asked for an explanation.

Response: The alphabetical designation is used to identify the accepted spare parts and maintenance tools on the Acceptance page of this contract.

One respondent commented that in section 1, "Total Base Bid" should be changed to read "Total Contract Price" for consistency with other parts of Form 525.

Response: The "Total Contract Price" includes the "Total Base Bid" plus accepted alternates. The term "Total Base Bid" is properly used in section 1.

One respondent commented that with regard to section 1, there was an understanding that REA required transportation charges to be included in the total contract price, not separately stated or invoiced.

Response: Section 1 clearly states that delivery of the equipment, materials and software is included in the bid price. Delivery includes transportation charges.

Two respondents commented that in section 2, the term "most recent" may be interpreted to preclude additions to existing switches or inhibit offering one of several release levels available for sale concurrently.

Response: When the REA Form 525 is used for the purchase of equipment additions, the owner's specification will state special requirements, such as the date of issue of the original equipment.

It is REA's intent to inhibit bidders from providing any but the latest of release levels available for sale at the time of bidding, or of near future release for which the Bidder can assure timely delivery.

One respondent commented that in section 3, the word "cost" in the ninth line should be changed to read "price" and also recommended adding

"discount pricing" to this provision for quantity purchases.

Response: REA disagrees. If a change requested by the Owner results in an additional or lesser cost to the bidder, the contract price should be amended to reflect such change. A requirement for "discount pricing" in this section is unenforceable.

One respondent commented that in section 3, those changes made by the owner should not be effective until agreed to in writing between the owner and bidder, including adjustments in schedule and price.

Response: The respondent is correct, but no change to the contract is necessary. In any contract, the bidder is responsible for performing the work in accordance with the contract specifications. Those specifications remain as originally agreed upon until they are changed by amendment.

Two respondents commented that in section 3 the words "reasonable" and "substantial" should be defined or deleted due to their subjective interpretation.

Response: REA disagrees in that omitting these words could permit arbitrary or unreasonable action on the part of the Owner or REA.

One respondent commented that the last sentence of section 3 was not clear regarding the need to amend the contract if the Bidder want to improve his delivery/completion time.

Response: Without an amendment to the contract, early delivery is a voluntary act that would be subject to approval of the Owner.

One respondent commented that in section 4 the words ". . . which the Bidder estimated will . . ." in the first sentence should be eliminated because it is irrelevant.

Response: The language has been deleted.

One respondent commented regarding section 4 that the bidder should, where possible, state what taxes are due at the time the proposal is presented.

Response: This would be an unnecessary burden on the Bidder. (REA believes all Bidders will be subject to the same taxes. If this is not the case, REA would appreciate comment to that effect).

**Article II Delivery and Installation**

One respondent commented that in section 1 the contract should clearly reflect that if the bidder fails to meet the completion date(s) the owner's exclusive remedy is the provision for liquidated damages as set forth in article V, section 2.

Response: The contract already contains such language in article V, section 5, Cumulative Remedies.

One respondent commented that in section 1 the reference to "the satisfaction of the Owner and the Administrator" is not quantifiable and therefore undesirable in a contract.

Response: If the language in question is deleted, the section would require unconditional adherence to the terms of the contract. The language is included here to allow the possibility of latitude, where the owner and REA agree.

One respondent commented that in section 1, page 6, line 7, the term "solely" is an unnecessary caveat and therefore should be deleted.

Response: The sentence in question lists some, but not all, situations where the bidder would be granted an extension of time. Such a list would include only circumstances which clearly warrant time extensions. If a delay arose from a situation for which the Owner was partially responsible, rather than "solely" responsible, it is not certain that an extension of time would be appropriate. REA believes the language is appropriate and did not change it.

One respondent commented that in section 1 the compensation of the bidder should be price adjustment basis, not cost.

Response: This is one of several sections in the contract where one party would reimburse costs and expenses of the other party. The intent is not to provide either party an opportunity to profit by the other party's failure.

One respondent commented that in section 1 the phrases "reasonable delay" and "reasonable cost and expense" need to be defined.

Response: Standard usage of the term "reasonable" in the Contract means "not excessive." When describing costs and expenses, "reasonable" has been replaced by "supportable."

Two respondents commented that in section 2 there should be a procedure to permit a change in the sequence of installation if both Owner and Bidder agree to such a change.

Response: The procedure for making this and other substantive changes to the contract is a contract amendment, which is discussed in detail in 7 CFR 1753, subpart A.

One respondent commented that in section 3, line 4, the phrase "at once" should be changed to either "a reasonable time" or "expeditiously."

Response: The more quickly an error, inconsistency or omission is brought to the owner's attention and corrected, the less harmful it is to the project. The term "at once" has been replaced with "promptly" in section 3.

One respondent commented that regarding the second sentence in section 3, the failure of the bidder to discover these items shall not create any obligation or liability on the part of the Bidder nor relieve the owner of its responsibilities.

Response: The bidder brings to this project a wealth of expertise in the field of central office switching. REA believes it is reasonable for the bidder to be responsible for reporting errors, inconsistencies or omissions it discovers.

Two respondents commented that in section 3 it should be made clear as to the extent that a superintendent is required on site and who is held responsible for delays if the owner causes removal of the superintendent.

Response: REA intends for the Bidder to keep a superintendent on the project whenever progress toward completion of installation is being made. The existing language requires this. The bidder is responsible for delays caused by the absence of a superintendent.

One respondent commented that the last sentence of section 3 should be changed to indicate who may request that the directions be confirmed in writing.

Response: Section 3 has been rewritten to clarify that the Bidder may request that oral directions from the owner be confirmed in writing.

One respondent commented that in section 3, the third sentence should be changed from "The bidder shall keep on the work * * * " to read "The bidder shall keep on the project * * * ,".

Response: Section 3 has been rewritten as suggested.

One respondent commented that the last sentence in section 4 should be deleted since such testing is at the owner's option and therefore associated cost is a responsibility of the owner.

Response: Under this section 4, the owner pays for up to two sessions of acceptance testing. It is unreasonable for the Owner to pay for additional tests made necessary by a Bidder's inability or unwillingness to correct deficiencies.

One respondent commented that in section 4 it is not clear to what extent the owner and administrator shall have the right to inspect all records.

Response: Section 4 states the rights of the owner and REA to inspect the bidder's records. One example of such an inspection would be an examination of records to determine whether materials provided are new, or are domestic in origin. The parenthetical statement defining "pertinent records"

has been narrowed to exclude only manufacturing cost information.

One respondent commented that in section 4, since the bidder was not required to provide test equipment, the owner should not be required to provide telephones, paystations, etc. to aid the bidder in system testing.

Response: It is in the owner's interest to provide reasonable assistance to the bidder in the bidder's testing, but under the contract the owner has no obligation to furnish test equipment for the bidder's tests.

One respondent commented that in paragraph 2 of section 4 the phrases "reasonable amount" and "reasonable cost" should be defined.

Response: The second paragraph of section 4 has been rewritten to eliminate the word "reasonable" as applied to costs and amounts.

One respondent commented that the second paragraph of section 4 should state when Form 517 is required for each individual office, and what happens if there is a failure to resolve all items within 45 days.

Response: The section has been rewritten to require testing and notification for each office as completed. The entire contract, including section 4, has been rewritten to establish a sixty day interval between the scheduled completion of installation and the actual completion of the project. This allows 30 days for the owner's inspection and tests and 30 days for the bidder's remedies of deficiencies found and the submission of required documents for Completion of Project. If the bidder fails to remedy deficiences, actual completion of the project cannot occur and liquidated damages accrue.

Two respondents commented that in the first paragraph of section 6 the "notice" should be "written notice" and that the "remedy or replace" should be shown to be at bidder's election.

Response: Change has been made to indicate that written notice is required and that remedy or replacement is to be at the bidder's option.

Two respondents commented that section 6(a), is unclear as to whether the warranty start date is the date of delivery of control of each central office and its associated remote switching terminals or is the date of delivery of control of the last RST in the contract.

Response: Paragraph (a) has been changed to clarify that the warranty for each central office and its associated remote switching terminals begins with its turnover to the owner.

Two respondents commented on section 6(b), noting that "notice" should be a "written notice."

Response: Change has been made to indicate that a written notice is required.

Two respondents commented in section 6(b), observing that there appears to be a warranty of an indefinite period.

Response: Change has been made to indicate a minimum software warranty period of five (5) years which is consistent with 7 CFR part 1753.38(c)(1)(v).

One respondent commented on section 6(b), noting that the word "substantially" needs to be defined or reworded.

Response: The word "substantially" has been deleted.

One respondent commented that in section 6(c), the word "use" should be changed to read "use, access and service" provided by Bidder at the request of owner.

Response: The word "use" adequately defines this requirement for technical assistance center service.

One respondent commented that in section 6(c), a subparagraph is needed which provides compensation to the owner for his time in assisting the bidder in correcting the bidder's problems after they have been diagnosed.

Response: Compensation for such assistance is a matter for negotiation between the owner and the bidder. (The contract does not require the owner to assist the bidder in diagnosing or correcting warranty failures).

One respondent commented that in section 6(e), the warranty limitation should be extended to include misuse and defects caused by failure to maintain appropriate environmental conditions.

Response: Misuse and failure to maintain appropriate environmental conditions are considered "abuse by the owner" and are thereby covered by paragraph (e).

One respondent commented that in section 6(f), the payment for shipment of defective components under warranty back to the Bidder should be the full responsibility of the Bidder.

Response: The arrangement stated in the proposed rule for shipment of defective and replacement components is a reasonable and convenient procedure for the owner and bidder.

Two respondents commented that in section 6(g), it is inappropriate to modify or add significant warranty terms or conditions through the technical section of a specification.

Response: To ensure fair, consistent and equitable treatment of all bidders section 6(g) has been deleted.

Two respondents commented that in section 6(h), the first sentence allowing bidders to propose additional warranty coverage should be deleted because it could disrupt the competitive bidding process.

Response: To ensure fair, consistent and equitable treatment of all bidders section 6(h) has been deleted.

One respondent commented that section 6 should be completely revised to free each bidder to negotiate an acceptable warranty provision with the owner.

Response: This contract contains a common set of warranty provision to facilitate competitive bidding, which is required in the REA loan programs.

Three respondents commented that section 6 should be extensively rewritten to add disclaimers, limit Bidder's liabilities, and limit owners' remedies.

Response: REA believes that the language as stated divides the risks equitably.

Article III Payments and Releases of Liens

One respondent commented that section 1(a), should be revised to indicate that the payment terms will be applied separately to each central office or remote switching terminal.

Response: Article I, section 1, and the contract in general, regard a central office, including all associated remote switching terminals, to be an indivisible unit, for delivery, payment, turnover, closeout, liquidated damages, and other purposes. A host office and its remotes are interdependent and alterations to one may affect the others. Therefore, REA regards a host office and all associated remotes as one item under this contract.

One respondent commented that section 1(a), involves software delivery which may be delayed several months or longer for future delivery of features. Does the payment schedule delay payment for delivery when undelivered materials, equipment and software are understood by the owner to be scheduled for delivery in the future?

Response: Article I, section 1, may provide separate time frames for delivery and installation of software or services that cannot be provided at the time the central office and remote switching units are to be placed in service. If separate schedules are not part of the contract, delays in delivery would cause delays in payments for the entire central office (including its associated remote switching units). This encourages a bidder's disclosure of delayed-delivery features prior to

bidding as required in article V, section 2.

One respondent commented that section 1(b), should clarify if 90 percent is to be paid after completion of installation of each individual central office and remote or after completion of installation of the host office and all associated RSTs.

Response: As stated above, the central office and all associated remote switching terminals are a unit for purposes of this contract.

One respondent commented that in section 1(c), the two references to completion of the project should read completion of installation.

Response: The references to completion of the project were proper, but REA has created a new term, "Completion of the Contract," defined under article VI to clarify this paragraph. These specific references to completion of the project have been deleted.

One respondent commented that in section 1(c), the 60 day timeframe for submission of the final certificate after completion of the project is too long. It should be 15 days and payment should be no later than 60 days.

Response: Preparation and execution of final documents to establish completion of the project involves the bidder, owner, a consulting engineer and REA. Fifteen (15) days in not sufficient time to accomplish the required processing of the final documents. The interval for the owner's submission of final documents to REA has been shortened to 30 days, and final payment is now due 60 days after Completion of the Contract.

One respondent commented that in section 1(c), there is no reference to the owner's engineer. Will REA Form 754 be revised to remove reference to the engineer.

Response: The engineer may be an agent of the owner but the owner has the ultimate contractual responsibility. The REA Form 754 is being revised, but the signature of the engineer is still required as a qualified agent of the owner to certify the completion of the project.

One respondent commented that section 1(c) indicates in the last sentence that the bidder can fault after completion of the project. How can this be?

Response: Evidence of bidder's default could be received by REA after completion of the project (or contract) which would cause a delay in REA approval of the closeout.

One respondent commented that in section 1(d), a change should be made from 45 days to 30 days.

Response: The 45 day interval was based on current turnaround time for REA advances of funds. REA is automating this process and the resulting reduction in turnaround time should be about 2 weeks. Therefore, this interval has been changed from 45 days to 30 days as suggested.

One respondent commented that in section 1(d), the second sentence should be changed from "Any amounts not paid when due . . ." to read "Any undisputed invoice amounts not paid when due . . . .".

Response: Section 1(d) has been changed to clarify that reference is made to the undisputed invoice amounts.

One respondent commented that in section 1(d), its does not seem to be a good idea to tie an interest rate to a particular publication since it could cease to exist.

Response: The Wall Street Journal is a widely circulated financial information publication and a readily available reference. If it ceases to exist a new reference will be selected.

Two respondents commented that in section 1(e), the partial closeout procedure should be applicable whenever separate central offices are involved and conditions should be identified that would cause the partial closeout procedure not to be allowed.

Response: REA does not wish to require borrowers to perform partial closeouts in all cases because in many situations the possible savings could not be offset by the cost of handling multiple closeouts. The bidders will know in advance whether partial closeouts will be allowed so they can build into their bids the costs or savings thereof.

One respondent commented that section 1(e), should be entitled "Partial Closeout Procedure" and that there may be a conflict with article IV, section 2, which provides for owner to take possession and control ahead of the scheduled completion date.

Response: Section 1(e) does not describe in detail a partial closeout procedure; Partial closeout procedures are addressed in 7 CFR part 1753, subpart E. Denial of partial closeouts presents no conflict with article IV, section 2.

Two respondents commented that in section 2 the second paragraph should be qualified to indicate that the Administrator's approval will not be unreasonably withheld and there should be an example of the required form.

Response: Language in section 2 has been changed to state the circumstance where REA would allow use of the alternative certification. Forms of certificates and release of lien have been incorporated into the contract. Concerning circumstances where REA approvals will be withheld, 7 CFR 1753.1(d) states REA's policy for withholding approvals of contracts, proposals, plans and specifications and other documents.

Article IV Particular Undertakings of the Bidder

Three respondents commented that in section 1(b), the risk of loss, damage, etc., should pass from the bidder to the owner on delivery of equipment to the installation site.

Response: Under the contract, the equipment remains under the control of the bidder until "delivery of possession and control" to the owner occurs. During the time between delivery of the equipment to the project and delivery of possession to the owner, the bidder is handling the equipment and software for purposes of installation and testing. The bidder is clearly in the best position to protect the equipment, and supervise environmental control for the protection of the equipment, throughout this period.

One respondent commented that in section 1(b), the last sentence contains the phrases "full authority" and "reasonably cooperate" which need to be defined. The respondent further commented that the owner's giving the bidder "full authority" to settle claims was inadvisable since the owner may also make a claim.

Response: Whenever unique or special terms are used in the contract, REA defines those terms. The terms cited are used as in normal usage and, therefore, require no contract definition. The paragraph has been revised to clarify the authority given the bidder by the owner to settle claims.

One respondent commented that in section 1(c), there should be an explanation of what data the owner is entitled to.

Response: The intent of this subsection is to enable the owner to meet its legal obligations for reporting accidents. Since those requirements vary from jurisdiction to jurisdiction, the language in section 1(c) cannot be made specific.

One respondent commented that in section 2, the owner should obtain full possession and control upon Completion of Installation and payment of amounts due upon Completion of Installation.

Response: Article IV, section 2, states the requirements for the owner's taking possession and control of the equipment. If the owner can use the equipment ahead of schedule, the contract allows the parties to agree to an earlier delivery of possession and

control. If the owner cannot benefit from a premature delivery of possession and control, the contract does not require the owner to accept such delivery. REA believes this section as written is appropriate.

One respondent commented that in section 2, a provision should be added to clarify that in-service cannot occur without first having delivery of possession and control passing to the owner.

Response: Article IV, section 2, has been rewritten to clarify this point.

One respondent commented that this section 2 and article I, section 3, related to time of completion of the project do not seem to agree.

Response: REA believes this comment is based upon the respondent's belief that delivery of possession and control is identical to completion of the project. Language has been added to Article IV, section 2, to clarify the distinction.

Three respondents commented that in section 3, it is impractical for the bidder to add the premiums for additional insurance to the bid price after the contract is executed.

Response: Article IV, section 3, has been rewritten to require that (1) the owner is to state special insurance requirements prior to bidding and (2) that payment for additional insurance specified after approval of contract shall be added to the contract price by an amendment to the contract.

One respondent commented that in section 3, provisions should be added to permit a bidder to self-insure.

Response: Insurance requirements for contractors are set forth in 7 CFR part 1788, subpart C, Insurance for Contractors, Engineers and Architects. This regulation does not provide for self insuring.

One respondent commented that in section 4, a provision should indicate that title shall not pass until 100 percent of the contract price is paid to bidder on a per office or RST basis.

Response: Such a provision would prevent the bidder's delivery of possession and control to the owner prior to completion of the project. It would not serve the interests of the bidder or the owner in many cases. After delivery of possession, the bidder has adequate protection under the contract and at law.

Two respondents commented that in section 5 an acceptable software license should be defined or a Uniform Software License should be an amendment to the contract.

Response: REA's objectives for software licensing were to provide Bidders with reasonable latitude in licensing and establish a system for licensing that would adapt to technological developments, while meeting requirements essential to the owner's reasonable use of the equipment and REA's need for security. REA's requirements for the software license are stated in 7 CFR 1753.38(c).

One respondent commented that in section 6, wording should be changed to eliminate the possibility of a lesser warranty being passed into the owner for vendor items.

Response: The language in section 6 has been changed to state that any quarantees passed onto the owner by the bidder shall be in addition to the warranty coverage defined in article II, section 6.

Two respondents commented that in section 7, in the event of the bidder's inability either to replace, or obtain a license for, infringing equipment, the bidder should have the option to refund purchase price less depreciation. The respondents further commented that this clause should be the owner's sole remedy.

Response: Such a provision would give the Bidder the right simply to "buy back" equipment or software when a copyright problem is encountered. To the owner, this means that essential features or capability could be lost and would remain unavailable for the entire useful life of new switching equipment. The resulting reduction in value of the contract to the owner cannot be predicted, and certainly cannot be limited to the price of the infringing equipment or software less depreciation.

One respondent commented that in section 7; the wording of the second sentence ". . ., the Bidder shall at the Owner's option modify . . ." should be changed to read ". . ., the Bidder, at no expense to the Owner, shall at the Owners option modify. . . .".

Response: The section has been rewritten to clarify this point.

One respondent commented that section 7 should include reference to trade secret infringement.

Response: The language in section 7 has been changed to include the suggested reference.

Article V Remedies

Three respondents commented on section 2, Liquidated Damages, regarding a contract-imposed limit. The comments and recommendations are summarized here:

Three respondents proposed a contract-imposed limit on liquidated damages.

Two respondents proposed that this limit be negotiated with the owner at the time of purchase.

One respondent proposed that a limit be written into the contract.

One respondent proposed that the limit not be an amount greater than the project price.

One respondent proposed eliminating the "no limit" option offered in the proposed rule.

Response: We believe that manufacturers strive to complete projects on schedule. However, the REA construction contracts have liquidated damages provisions, which provide a method of assessing damages by flat rate, per day of delay, to ensure completion of the project in a timely manner.

REA believes that if a limit is to be set in the contract, it should not be less than the price of the affected central office and all associated remote switching units. This in many cases will be less than the total contract price.

The proposal to allow the bidder and owner to negotiate a limit is unworkable. It would be very unwieldy in competitive bidding, which is a requirement for most REA-financed systems.

The initial proposed rule gave the owner the option of declaring a no limit liquidated damages provision, and one respondent proposed eliminating this option. REA believes a fixed limit in the amount of the affected central office and its associated remote switching units provides the protection the Owner needs, so the no limit option has been deleted.

One respondent commented that in section 2, the second to last paragraph on page 20 requires rewording to avoid unrealistic demands for liquidated damages being made on the bidder.

Response: Language in this paragraph has been rearranged to clarify that liquidated damages can be assessed only when the Bidder has failed to complete on time.

Two respondents commented that the paragraph in section 2 defining "placed in service" should be clarified.

Response: The language defining "placed in service" has been revised and this definition has been moved to article VI, section 1, Definitions.

Five respondents commented on section 3, consequential damages. From the comments received, it appears that this section is of great concern to equipment manufacturers. The comments and recommendations received were diverse, but are summarized here:

Three respondents commented that without a limit on liability for consequential damages, there is no way for a bidder to assign a cost to the risk.

These respondents argued that it is at least unwise for a Bidder to prepare a bid with an unknown factor as substantial as this. They suggested that responsible Bidders would eventually refuse to bid REA projects.

Two respondents proposed liability limits to be negotiated with the owner at the time of purchase.

One respondent proposed to delete the section and any reference to consequential damages entirely.

One respondent commented that consequential damage claims would be decided by the courts and that no limits should be set in the contract.

Response: REA's intent is to place a limit of liability on consequential and incidental damages, except for personal injury or tangible property damage, which will: Enable bidders to insure for a risk of known limit; provide owners with protection against losses related to product failure; protect the government's loan security; and serve as a standard that bidders and owners alike can expect to see on every contract so competitive bidding can be facilitated.

Respondents representing Bidders' interests proposed that Bidders bear no liability for consequential damages, and respondents representing owners' interests proposed that there be no limit on a bidder's liability for consequential damages. Neither of these proposals satisfies REA's objectives stated above.

The proposed to allow the bidder and owner to negotiate a limit is unworkable. It would be very unwieldy in competitive bidding, which is a requirement for most REA-financed systems.

REA has established a liability limit of ten times the total contract amount, which will result in a limit in the range of $2.5 million to $7.5 million for typical REA contracts.

One respondent commented that the section 5 cumulative damages provision is not proper, rather each damage or infringement issue should have an exclusive remedy.

Response: The liquidated damages provision is an exclusive remedy, as section 5 states, but the warranty and infringement provisions are not exclusive remedies. For example, a defective component, serviced under article II, section 6, could cause a consequential damages claim. The language in section 5 is unchanged.

One respondent commented that section 5 seems to conflict with section 2 since both liquidated and consequential damages may result from late completion.

Response: the liquidated damage provision is the exclusive remedy for late completion. It is an estimate of the owner's total losses resulting from late completion, and it precludes other claims.

Article VI Miscellaneous

One responent commented that the contract consists of more than that which is stated in section 1(a).

Response: REA Form 525 consists of the notice and Instructions to bidder, the bidder's proposal, the contractor's bond, and the owner's acceptance. The definition in section 1(a) includes these items plus the specifications. This is a complete definition of the contract.

One respondent commented that in section 1(c), the software definition should specifically exclude "source code" from backup documentation.

Response: Paragraph (c) has been rewritten to exclude source code from backup documentation.

One respondent commented that in section 1(d), the wording should be changed because it is impossible in many cases to determine completion of installation without final acceptance testing.

Response: Paragraph (d) has been substantially rewritten to resolve this and other areas of confusion. The actual date of completion of installation is defined as the date the bibber submits to the owner written notification that the equipment is complete in conformance with the specifications and is ready for the owner's tests.

One respondent commented that in section 1(e), there should be a clarification to show that the date of project completion is not the date approved by the administrator but rather the date shown on the form approved by the administrator.

Response: Paragraph (e) has been substantially rewritten to clarify this point.

Four respondents commented on section 2, with views varying from the possibility that the requirement for continuing equipment support may not be workable to suggestions that support should be limited to 8 years from completion of project or 15 years from date of contract.

Response: From the comments received and the quality of their supporting arguments, REA concludes that this new section strikes a reasonable balance for sellers and buyers. The original section, written for the part 1762 proposed rule revision, was derived from existing language in one manufacturer's contract, and by the actual performance of another manufacturer who honorably left the field of manufacturing switching equipment several years ago.

One respondent commented that in section 4(a), the second sentence of paragraph (1) should be reworded because the present wording states that the bidder shall take affirmative action to ensure that applicants are employed. However, the bidder is in no position to ensure applicants are employed.

Response: The entire Equal Employment section has been rewritten to conform with current requirements.

One respondent commented that section 6 should be tied in with article VI, section 2, in such a manner as to allow third party support where the bidder abandons production and support of his equipment.

Response: REA agrees. The language in section 6 has been changed.

One respondent commented that in section 6, the confidentiality obligation should include not only technical information but all information that is appropriately marked.

Response: Section 6 has been revised to cover all information so marked.

One respondent commented that in section 6, the public domain exception should not apply when the receiving party has caused the information to be in the public domain. On the other hand, the receiving party should be relieved of the confidentiality obligation with respect to information which is independently developed by the receiving party, is lawfully received free of restriction, or is already known to the receiving party at the time of disclosure free of restriction.

Response: A sentence has been added to section 6 to state this.

One respondent commented that in section 7, contrary to the statements in this section, the REA Form 525 in its present draft form does contain implied understandings and representations.

Response: The respondent did not give any examples to support its comment, and REA does not intend the form to contain implied understanding or representations, so the language is unchanged.

Comment: One respondent commented that in section 11 the Contractor's license requirement causes problems and project delays due to the uncertainty of the need for a license. The respondent suggested that the Owner be required to determine the need for a license.

Response: Since the bidder is the party who ultimately will have to abide by the State's licensing requirements, REA believes it is prudent for the bidder to bear the responsibility of determining whether a license is required for bidding.

Three respondents commented that in section 12, the bidder should be allowed to subcontract the installation work to a third party whether or not it is a subsidiary of the bidder with approval of the owner and the administrator.

Response: REA agrees. The requirement that an installation subcontractor be a subsidiary of the bidder has been deleted.

One respondent suggested that section 9 be changed to read "No Waiver of any term or condition * * *" rather than the current "No Waiver of the terms and conditions * * *".

Response: The suggested language clarifies the section and has been adopted.

One respondent commented that in section 14, the 90 day time interval needs to be increased to at least 120 days due to delays in obtaining REA approval of the award of contract (bid), getting all the documents executed, and obtaining the contractor's bond.

Response: REA believes that 90 days is adequate for all parties to diligently execute a Contract.

One respondent commented that in section 14, the bidder should be required to furnish a copy of the power of attorney with each contract because the owner does not know what power of attorney is on file with REA.

Response: Although the commentor argues that this new requirement would cut down delays in obtaining proper contract documents from the bidder, REA believes it would slow the process. A power of attorney is a legal document, executed and certified by company officials under proper authority from the corporation's governing body. Such documents take time to generate. If a borrower, such as a borrower on the Certification Program, needs to confirm a power of attorney, REA will be pleased to do so by telephone.

One respondent commented that in section 14 regarding the circumstances requiring the "Power of Attorney" authorization, some corporations use other forms to delegate authority, therefore, a change should be made to accommodate such arrangements.

Response: The language has been changed in the proposed rule to accommodate other legally acceptable documents authorizing execution.

Contractor's Bond

One respondent commented that in the last paragraph on page 36 entitled, Power of Attorney, the phrase that reads " . . . in jurisdictions so requiring should be counter signed . . ." should be changed to read " . . . in jurisdictions so requiring shall be countersigned . . .".

Response: The contractor's bond form has been changed to replace the word "should" with "shall" as suggested.

REA has incorporated the changes noted above and has also incorporated Executive Order 12549, Debarment and Suspension, and the requirement of Public Law No. 101–121, section 319, 103 Stat. 701, 750–755 (31 U.S.C. section 1352) (1989), entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and their implementing regulations.

**List of Subjects in 7 CFR Part 175**

Loan programs—communications, Reporting and recordkeeping requirements, Telecommunications, Telephone.

In view of the above, REA is proposing to amend 7 CFR part 1755 as follows:

1. The authority cited for part 1755 continues to read as follows:

**Authority:** 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

2. The table in § 1755.93 would be amended by revising the entry for REA Form 525 to read as follows:

**§ 1755.93 List of standard forms of telecommunications contracts.**

* * * * *

| REA Form No. | Issue date | Title | Purpose | Source of copies |
|---|---|---|---|---|
| 525 | Date of final rule | Central office equipment contract (including installation). | Purchase and installation of Central office switching equipment. | REA [1] |

[1] A limited number of copies of the publication will be furnished by REA upon request. As this document is produced by the Federal Government and is, therefore, in the public domain, additional copies may be duplicated locally by any user as desired. Requests for copies should be sent to the Director; Administrative Services Division, U.S. Department of Agriculture, Rural Electrification Administration, Washington, DC 20250. The telephone number of the REA Publications Office is (202) 382–8674.

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Dated: March 7, 1991.

**Gary C. Byrne,**

*Administrator.*

[FR Doc. 91–5927 Filed 3–13–91; 8:45 am]

BILLING CODE 3410–01–M

## 7 CFR Part 1755

## Telecommunications Standards and Specification for Materials, Equipment and Construction

**AGENCY:** Rural Electrification Administration, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Rural Electrification Administration (REA) proposes to amend 7 CFR 1755.97, Incorporation by reference of telephone standards and specifications by rescinding REA Bulletin 345–165, General Specification for Digital, Stored Program Controlled Central Office Equipment, REA Form 522, and issuing a revised version as Bulletin 1753E–001 (522), to permit greater latitude in the provisioning of power converters and ringing source functions where such units are of sufficient reliability as to not diminish public telephone service integrity. This proposed minor revision is restricted to changes that are to be made to pages 44 and 54 of Bulletin 1753E–001 (522), General Specification for Digital, Stored Program Controlled Central Office Equipment.

**DATES:** Public comments concerning this proposed rule must be received by REA or postmarked no later than April 15, 1991. REA requests an original and three copies of all comments.

**ADDRESSES:** Comments may be mailed to Donald M. Van Bellinger, Director, Telecommunications Staff Division, Rural Electrification Administration, room 2835, South Building, U.S. Department of Agriculture, Washington, D.C. 20250–1500. Comments received may be inspected Monday through Friday in room 2835 between 8 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Dean A. Dion, Chief, Central Office Equipment Branch, Telecommunications Staff Division, Rural Electrification Administration, room 2832, South

Building, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone number (202) 382–8671.

**SUPPLEMENTARY INFORMATION:** The proposed action has been reviewed in accordance with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and, therefore, has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) (1976) and, therefore, does not require an environmental impact statement or an environmental assessment.

This proposed rule does not contain new or amended reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget under OMB approval number 0572–0062.

This program is listed in the catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the final rule related notice to 7 CFR 3015, subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

**Background**

REA has issued a series of publications entitled "bulletins" which serve to implement the policy, procedures, and requirements for administering its loans and loan guarantee programs and the security instruments which provide for and secure REA financing. In the bulletin series REA issues standards and specifications for the construction of telephone facilities financed with REA loan funds. REA is proposing to rescind Bulletin 345–165 "REA General Specification for Digital, Stored Program Controlled Central Office Equipment, REA Form 522" and to replace it with a revision designated Bulletin 1753E–001 (522), "REA General Specification for Digital, Stored Program Controlled Central Office Equipment."

The REA specification needs to be changed occasionally to incorporate technical changes which are considered advantages to the REA telephone borrower and their subscribers and to keep pace with advancements in technology. Substantial improvement in recent years of electronic component reliability now permits the introduction of an alternative to the present stringent specification requirements that makes it necessary to always provide redundant ringing equipment and duplicated power converters. Revision of these requirements will allow nonredundant ringing equipment and nonduplicated power converters to be provided when there is full compliance with certain specified service criteria. This minor revision will permit greater latitude in the provisioning of power converters and ringing equipment where such units are of sufficient proven reliability as to not diminish public telephone service integrity. It is proposed that Bulletin 1753E–001 (522) "General Specification for Digital, Stored Program Controlled Central Office Equipment" be changed as follows:

It is proposed to modify, part I, section 15.5 Ringing Generator and section 19.6 Power by renumbering the present paragraphs 15.5.2 and 19.6.2 to be 15.5.2.1 and 19.6.2.1 respectively, using 15.5.2 and 19.6.2 for subsection titles and adding paragraphs 15.5.2.2 and 19.6.2.2, which would result in the subsections reading as follows:

*15.5.2 Ringing Equipment Provisioning*

15.5.2.1 Provision shall be made for redundant ringing equipment. There shall be automatic transfer to the redundant equipment within the period of one ringing cycle, in case of failure of the equipment in use (either regular or standby). Automatic transfer shall not take place under any other conditions. Provision shall be made for manual transfer in each direction.

15.5.2.2 An exception to the redundant ringing equipment requirement shall permit nonredundant ringing equipment to be utilized where there is full compliance with the following service criteria.

a. In a central office switching system of 400 or more equipped lines, a single nonduplicated ringing source failure shall not cause the complete loss of ringing capability to more than 100 lines.

b. In a central office switching system of less than 400 equipped lines, a single nonredundant ringing source failure shall not cause the complete loss of ringing capability to more than 25 percent of the total equipped lines.

*19.6.2 Ringing Equipment Provisioning*

19.6.2.1 Ringing Machine: Ringing sources shall be supplied in duplicate.

19.6.2.2 An exception to the duplicated ringing source requirement shall permit nonduplicated ringing source(s) to be utilized where there is full compliance with the following service criteria.

a. In a remote switching terminal (RST) of 400 or more equipped lines, a single nonduplicated ringing source failure shall not cause the complete loss of ringing capability to more than 100 lines.

b. In a remote switching terminal (RST) of less than 400 equipped lines, a single nonredundant ringing source failure shall not cause the complete loss of ringing capability to more than 25 percent of the total equipped lines.

It is also proposed that, part I, section 15.4, Miscellaneous Voltage Supplies and section 19.6 Power be modified by the renumbering of the present 15.4.2 and 19.6.3 paragraphs to be 15.4.2.1 and 19.6.3.1, respectively, using 15.4.2 and 19.6.3 for subsection titles and adding paragraphs 15.4.2.2 and 19.6.3.2, which would result in the subsections reading as follows:

*15.4.2 Power Converters*

15.4.2.1 Power converters required for the purpose of providing various operating voltages to printed circuit boards or similar equipment employing electronic components shall be provided in duplicate with each unit capable of immediately assuming the full operating load upon failure of a unit.

15.4.2.2 An exception to the duplicate power converter requirement shall permit nonduplicated power converter(s) to be utilized where there is full compliance with the following criteria.

a. The failure of any single nonduplicated power converter shall not reduce the grade of service of common control and service circuits to any individual line or trunk by more than 50 percent.

b. The failure of any single nonduplicated power converter shall not reduce the traffic carrying capacity of any interoffice trunk group by more than 50 percent.

c. In central office switching systems of 400 or more equipped lines, any single nonduplicated power converter failure

shall not cause a complete loss of service to more than 100 equipped lines.

d. In central office switching systems of 400 equipped lines, any single nonduplicated power converter failure shall not cause a complete loss of service to more than 25 percent of the total equipped lines.

*19.6.3 Power Converter*

19.6.3.1 Power converters required for the purpose of providing various operating voltages to printed circuit boards or similar equipment employing electronic components shall be provided in duplicate with each unit capable of immediately assuming the full operating load upon failure of a unit.

19.6.3.2 An exception to the duplicate power converter requirement shall permit nonduplicated power converter(s) to be utilized where there is full compliance with the following criteria.

a. The failure of any single nonduplicated power converter shall not reduce the grade of service of common control and service circuits to any individual line or trunk by more than 50 percent.

b. The failure of any single nonduplicated power converter shall not reduce the traffic carrying capacity of any trunk group or service links to a host office by more than 50 percent.

c. In a remote switching terminal (RST) of 400 or more equipped lines, any single nonduplicated power converter failure shall not cause a complete loss of service to more than 100 equipped lines.

d. In a remote switching terminal (RST) of less than 400 equipped lines, any single nonduplicated power converter failure shall not cause a complete loss of service to more than 25 percent of the total equipped lines.

The above proposed specification changes will sufficiently increase the text content of pages 44 and 54 as to require that two additional pages be added. To avoid renumbering the pages of this sizable document at this time, the additional pages are to be designated 44(a) and 54(a).

Major central office manufacturers presently have the ability to support the changes contained in this revision of the REA specification. Therefore, there should be little impact on them in complying with the new requirements.

**List of Subjects in 7 CFR Part 1755**

Loan Programs—communications, Telecommunications, Telephone.

In view of the aboe, REA is proposing to amend 7 CFR part 1755 by revising Bulletin 345–165 and reissuing it as Bulletin 1753E–001(522).

**PART 1755—(AMENDED)**

1. The authority cited for part 1755 continues to read as follows.

**Authority:** 7. U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

2. The table in § 1755.97 is amended by removing the entry for Bulletin 345–165 and adding in numerical order the entry for Bulletin 1753E–001(522) to read as follows:

**§ 1755.97 Incorporation by reference of telephone standards and specifications.**

* * * * *

| REA Bulletin No. | Specification No. | Date last issued | Title of standard or specification |
|---|---|---|---|
| * | * * | * * | * * |
| 1753E–001(522) | | Date of final rule | REA general specification for digital, stored program controlled central office equipment. |

Dated: March 7, 1991.

**Gary C. Byrne,**

*Administrator.*

[FR Doc. 91–5928 Filed 3–13–91; 8:45 am]

**BILLING CODE 3410–15–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 91–CE–08–AD]**

### Airworthiness Directives; Beech Models 95–C55, C55A, D55, D55A, E55, E55A, 58, and 58A Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Beech Models 95–C55, C55A, D55, D55A, E55, E55A, 58, and 58A airplanes. The proposed action would require periodic inspections for cracks in the engine mounts. There have been reports of cracked engine mounts on the affected airplanes. Cracked engine mounts, if not detected and corrected, could lead to severe engine vibration and possible separation of the engine from the airplane. The actions specified in the proposed AD are intended to detect and correct engine mount cracks before the engine mounts are damaged to the point of failure.

**DATES:** Comments must be received on or before May 17, 1991.

**ADDRESSES:** Beech Service Bulletin (SB) No. 2362, Revision 1, dated February 1991, and Beech Kit 58–007–1S that are discussed in this Ad may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. The service information may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–08–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4409.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact

concerned with the substance of this proposal will be filed in the Rules Docket.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–08–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

### Discussion

The FAA has received reports of cracks in the engine mounts on certain Beech Models 95–C55, C55A, D55, D55A, E55, E55A, 58, and 58A airplanes. Cracked engine mounts, if not detected and corrected, could lead to severe engine vibration and possible separation of the engine form the airplane. Beech has issued Service Bulletin (SB) No. 2362, Revision 1, dated February 1991, which specified periodic inspections for engine mount cracks on the affected airplanes. If cracks are found, the SB also specifies a modification to the engine mount (Beech Kit 58–9007–1S) or replacement with a new engine mount (part number 96–910010–67). The periodic inspections may be terminated if the modificaiton is accomplished or a replacement engine mount is installed. The FAA has determined that AD action is necessary to detect and correct any cracked engine mount on the affected airplanes.

Since the condition described is likely to exist or develop in other Beech Models 95–C55, C55A, D55, D55A, E55, E55A, 58, and 58A airplanes of the same type design, the proposed AD would require periodic inspections for engine mount cracks and, if found cracked, either installation of Beech Kit 58–9007–1S or replacement with a new engine mount (part number 96–910010–67) in accordance with the instructions in Beech SB No. 2362, Revision 1, dated February 1991. The periodic inspections may be terminated if the modification is accomplished or a replacement engine mount is installed.

It is estimated that 2,812 airplanes will be affected by the proposed AD and that it will take approximately 4 hours per airplane to accomplish the proposed inspections at $40 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $449,920.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES".**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

### PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

**Beech:** Docket No. 91–CE–08–AD.

*Applicability:* Models 95–C55, 95–C55A, D55, D55A, E55, and E55A airplanes (serial number (S/N) TC350, and S/N TE–1 through TE–1201), and Models 58 and 58A airplanes (S/N TH–1 through TH–1610), certified in any category.

*Compliance:* Required as indicated, unless already accomplished.

To prevent severe engine vibration and possible separation of the engine from the airplane caused by cracked engine mounts, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, conduct a visual and dye penetrant inspection of the engine mounts in accordance with the instructions in Beech Service Bulletin (SB) No. 2362, Revision 1, dated February 1991.

(1) If no cracks are found, repeat the inspection on each engine mount thereafter at intervals not to exceed 100 hours TIS.

(2) If a crack is found in an engine mount, prior to further flight, remove the engine from the affected engine mount, remove the mount from the airplane, and magnetic particle inspect the engine mount to determine the length of the crack in accordance with the instructions in Beech SB No. 2362, Revision 1, dated February 1991.

(i) If the length of the crack is .52 inches (true) or less, repair and reinforce the engine mount using Beech Kit 58–9007–1S in accordance with the instructions in Beech SB 2362, Revision 1, dated February 1991.

(ii) If the length of the crack is greater than .52 inches (true), remove and replace the cracked engine mount with a part number (P/N) 96–910010–67 engine mount in accordance with the instructions in Beech SB No. 2362, Revision 1, dated February 1991.

(3) The repetitive inspections specified in paragraph (a)(1) of this AD may be terminated on an engine mount that has been repaired and reinforced with Beech Kit 58–9007–1S or if a P/N 96–910010–67 engine mount has been installed.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(c) An alternate method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Beech Aircraft Corporation, P.O. Box 85, Witchita, Kansas 67201–0085; or may examine the service information d at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on March 1, 1991.

**Henry A. Armstrong,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 91–6052 Filed 3–13–91; 8:45 am]

**BILLING CODE 4910–13–M**

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**14 CFR Part 39**

**[Docket No. 90–CE–73–AD]**

## Airworthiness Directives; Beech 33, 35, and 36 Series Airplanes

**AGENCY:** Federal Aviation Administration (FFA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Beech 33, 35, and 36 series airplanes. The proposed action would require initial

and repetitive inspections for cracks in the wing front spar carry-through structure. There have been reports of cracks developing in this structure on the affected airplanes. The actions specified in this proposed AD are intended to detect and repair cracks before the wing structure is damaged to the point of failure.

**DATES:** Comments must be received on or before May 3, 1991.

**ADDRESSES:** Beech Service Bulletin (SB) No. 2360, dated November 1990, that is discussed in this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–73–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4409.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–73–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

### Discussion

Several reports have been received of cracks developing in the wing front spar carry-through structure forward and aft frames (webs) on certain Beech 33, 35, and 36 series airplanes. As a result, Beech has issued Service Bulletin (SB) No. 2360, dated November 1990, which specifies the inspections and repairs that are necessary to detect and repair these cracks on the affected airplanes. The FAA has determined that if these cracks are not detected and repaired, the structural integrity of the wing carry-through structure may be damaged to the point of failure.

Since the condition described is likely to exist or develop in other Beech 33, 35, and 36 series airplanes of the same type design, the proposed AD would require initial and repetitive inspections of the wing front spar carry-though structure forward and aft frames, and repairs if cracks are found, in accordance with Beech SB No. 2360, dated November 1990.

It is estimated that 11,000 airplanes in the U.S. registry will be affected by the proposed AD, and that it will take appoximately 8 hours per airplane to accomplish the proposed inspections at $40 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,520,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES".**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

**Beech:** Docket No. 90–CE–73–AD.

*Applicability:* Applies to the following Models and serial numbered airplanes, certificated in any category.

| Models | Serial Numbers |
|---|---|
| 35–33, 35–A33, 35–B33, 35–C33, E33, F33, and G33. | CD–1 through CD–1304. |
| 35–C33A, E33A, and F33A. | CE–1 through CE–1192. |
| E33C and F33C | CJ–1 through CJ–179. |
| H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B. | D–4866 through D–10403. |
| 36 and A36 | E–1 through E–2397. |
| A36TC and B36TC | EA–1 through EA–471 |

*Compliance:* Required as indicated after the effective date of this AD, unless already accomplished.

To prevent structural damage of the wing attachment to the fuselage, accomplish the following:

(a) Upon the accumulation of 1,500 hours time-in-service (TIS), or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 500 hours TIS, inspect the wing front spar carry-through frame (web) structure for cracks in accordance with the instructions in Beech Service Bulletin (SB) No. 2360, dated November 1990.

(b) If crack are found in the bend radius as a result of the inspections required in paragraph (a) of this AD, accomplish the following in accordance with the instructions in Beech (SB) No. 2360:

(1) For cracks up to 2.25 inches, prior to further flight, stop drill at the crack ends. Only one stop-drilled crack per left side and one stop-drilled crack per right side of the wing forward spar carry-through structure bend radius in permissible if neither one exceeds 2.25 inches. If more than one is found, prior to further flight, install Beech part number (P/N) 36–4004 Kit.

(2) For cracks between 2.25 and 4.0 inches, prior to further flight, stop drill at the crack ends, and within the next 100 hours TIS, install Beach P/N 36–4004 kit. Only one stop-drilled crack per left side and one stop-drilled crack per right side of the wing forward spar carry-through structure bend radius in permissible if neither one exceeds 2.25 inches. If more than one is found, prior to further flight, install Beech (P/N) 36–4004 Kit.

(3) For cracks exceeding 4.0 inches, prior to further flight, install Beech P/N 36–4004 Kit.

(c) If cracks are found in the web face in the area of the huckbolt fasteners as a result of the inspections required in paragraph (a) of this AD, accomplish the following in accordance with the instructions in Beech SB No. 2360:

(1) For cracks less than 1 inch in length, no action is required until the repetitive inspection interval. Do not stop drill these cracks because it is possible to damage the structure behind the web face. One crack on each side is allowable if neither one exceeds 1 inch. If more than one crack is found on either side, prior to further flight, install Beech (P/N) 36–4004 Kit.

(2) For cracks more than 1 inch in length, within the next 25 hours TIS, install Beech P/N 36–4004 Kit. One crack on each side is allowable. If more than one crack is found on either side, prior to further flight, install Beech (P/N) 36–4004 Kit.

(3) If a cracks passes through two fasteners but is less than 0.5 inches beyond either fastener, within the next 25 hours TIS, install Beech P/N 36–4004 Kit. One crack on each side is allowable. If more than one crack is found on either side, prior to further flight, install Beech (P/N) 36–4004 Kit.

(4) If a cracks passes through two fasteners but is more than 0.5 inches beyond either fastener, prior to further flight, install Beech P/N 36–4004 Kit.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(e) An alternate method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita Aircraft Certification Office.

(f) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085; or may examine the document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 20, 1991.

**Henry A. Armstrong,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 91–6053 Filed 3–13–91; 8:45 am]

BILLING CODE 4910–13–M

**14 CFR Part 39**

**[Docket No. 91–NM–32–AD]**

## Airworthiness Directives; Israel Aircraft Industries (IAI) Models 1121, 1121A, 1121B, 1123, 1124, and 1124A Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to all Israel Aircraft Industries (IAI) Models 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes, which would require the removal of a towing instruction placard and the installation of a new placard. This propsal is prompted by a report of a nose gear-up landing due to landing gear actuating system damage that jammed the nose gear in the retracted position. This condition, if not corrected, could result in the inability to extend the nose landing gear for landing.

**DATES:** Comments must be received no later than April 30, 1991.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–32–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service informatoin may be obtained from Astra Jet Corporation, Technical Publications, 77 McCullough Drive, suite 11, New Castle, Delaware 19720. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Quam, Standization Branch, ANM–113; telephone (206) 227–2138. Mailing Address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the subsection of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–32–AD." The post card will be date/time stamped and returned to the commenter.

### Discussion

On November 9, 1989, an Israel Aircraft Industries (IAI) Model 1124A airplane landed with the nose gear jammed in the nose gear wheel well. Subsequent inspection of the nose gear revealed that the nose steering attachment brackets were broken from their mounts and the steering actuator assembly was wedged between the nose gear trunnion and the nose wheel well forward bulkhead.

The pilot-guided steering mechanism is limited in its range of turning movement, and must be disconnected by removing the scissor pin and securing the upper scissor in the "up" position when the airplane is being towed. If this procedure is not followed, and if a towing turn is attempted that exceeds the angle of the steering stop, the attachment brackets will break from their mounts attached to the forward wheel well bulkhead. The nose gear-up landing incident described above may have been caused by failure to disconnect the scissor pin during earlier ground towing.

At least three previous nose wheel steering breakage incidents have occurred over a 10-year period. Whenever the airplane's turn limits were exceeded during towing with the scissor pin installed, the nose steering mount brackets broke from their mounts attached to the nose wheel well forward bulkhead. This condition, if not corrected, could result in the inability to extend the nose landing gear for landing.

IAI has issued Service Bulletins 1121–11–015, 1123–11–031, and 1124–11–103, all dated November 16, 1990, which describe procedures for removing the existing towing instruction placard

located on the nose landing gear forward door, and installing an improved placard. The original towing placard instructions have been delineated and clarified for the new placard. In addition, instructions have been added to secure the upper scissor in the "up" position before towing, to put the nose gear in the center forward position, and to reconnect the scissor for normal flight after towing. The Civil Aviation Administration of Israel (CAAI) has approved these service bulletins, but has not classified them as mandatory.

This airplane model is manufactured in Israel and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require removal of the existing towing instruction placard and the installation of a new placard in accordance with the service bulletin previously described.

It is estimated that 316 airplanes of U.S. registry would be affected by this AD, that it would take approximately 0.5 manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for required placards is $7 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,532.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Asessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Israel Aircraft Industries (IAI):** Applies to Models 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes, certificated in any category. Compliance is required within 60 days after the effective date of this AD, unless previously accomplished.

To prevent the inability to extend the nose landing gear for landing, accomplish the following:

A. Remove the existing towing instruction placard and install a new placard in accordance with the applicable service bulletin, as follows:

| Airplane Models | Service Bulletin |
|---|---|
| 1121, 1121A, 1121B | 1121–11–015, dated November 26, 1990. |
| 1123 | 1123–11–031, dated November 26, 1990. |
| 1124 and 1124A | 1124–11–103, dated November 26, 1990. |

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

**Note:** The request should be submitted directly to the Manager, Standardization Branch, ANM–113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Astra Jet Corporation, Technical Publications, 77 McCullough Drive, Suite 11, New Castle, Delaware 19720. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on March 1, 1991.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 91–6059 Filed 3–13–91; 8:45 am]

BILLING CODE 4910–13–M

**14 CFR Part 39**

**[Docket No. 91–NM–27–AD]**

## Airworthiness Directives; British Aerospace Model BAe 146–100A, –200A, and –300A Series Airplanes, Pre-Modification HCM0115A and HCM00967A

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes, which would require modification of the parking brake selector assembly by installation of a special washer. This proposal is prompted by reports of failure of the hook end of the spring on the parking brake quadrant due to fatigue. This can result in the inadvertent engagement of the parking brake, and the resultant inability of the flight crew to release the parking brake. This condition, if not corrected, could result in reduced controllability of the airplane during takeoff or landing.

**DATES:** Comments must be received no later than April 30, 1991.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–27–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Schroeder, Standardization Branch, ANM–113; telephone (206) 227–2138. Mailing address; FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–27–AD." The post card will be date/time stamped and returned to the commenter.

## Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes, pre-modification HCM01159A and HCM00967A. There have been recent reports of failures of the hook end of the spring on the parking brake quadrant due to fatigue. This can result in the inadvertent engagement of the parking brake, and the resultant inability of the flight crew to release the parking brake. This condition, if not corrected, could result in reduced controllability of the airplane during takeoff or landing

British Aerospace has issued Service Bulletin 32–104–01159A, dated October 1, 1990, which describes procedures to install a special washer in the parking brake selector assembly (Modification No. HCM01159A). This prevents the cable tension spring in the selector assembly from inadvertently selecting the parking brake when pilots apply full brakes after failure of another spring in the parking brake mechanism. The United Kingdom has classified these service bulletins as mandatory.

This airplanes model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require the installation of a special washer in the parking brake selector assembly, in accordance with the service bulletin previously described.

It is estimated that 74 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for required parts is $100 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $25,160.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**British Aerospace:** Applies to Model BAe 146–100A, –200A, and –300A series airplanes, pre-modifications HCM01159A and HCM00967A, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent inadvertent application of the parking brake, and subsequent reduced controllability of the airplane during takeoff or landing, accomplish the following:

A. Within 90 days after the effective date of this AD, install a new washer in the parking brake selector assembly, in accordance with British Aerospace Service Bulletin 32–104–0115A, dated October 1, 1990 (Modification No. HCM01159A).

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

**Note:** The request should be submitted directly to the Manager, Standardization Branch, ANM–113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on March 1, 1991.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 91–6058 Filed 3–13–91; 8:45 am]

BILLING CODE 4910–13–M

**14 CFR Part 75**

**[Airspace Docket No. 91-AGL-1]**

## Proposed Alteration of Jet Route J- 522; MI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to alter the description of Jet Route J-522 located in the vicinity of Traverse City, MI. The realignment would eliminate the dogleg between Traverse City and Toronto, ON, Canada, thereby improving navigation between those facilities. This action would enhance flight operation in the area.

**DATES:** Comments must be received on or before April 29, 1991.

**ADDRESSES:** Send comments on the proposal in triplicate to:

Manager, Air Traffic Division, AGL-500, Docket No. 91-AGL-1, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-AGL-1." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

### The Proposal

The FAA is considering an amendment to part 75 of the Federal Aviation Regulations (14 CFR part 75) to realign a segment of Jet Route J-522 between Traverse City, MI, and Toronto, ON, Canada. The realignment would eliminate a dogleg to the north, thereby saving fuel and improving navigation along the course line. This action would enhance flight operations in the area. Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 75 of the Federal Aviation Regulations (14 CFR prt 75) as follows:

## PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 75.100 [Amended]**

2. § 75.100 is amended as follows:

**J-522 [Revised]**

From Green Bay, WI; Traverse City, MI; Au Sable, MI; Toronto, ON, Canada; INT Toronto 099°T(108°M) and Hancock, NY, 302°T(313°M) radials; Hancock; to Kingston, NY. The airspace within Canada is excluded.

Issued in Washington, DC, on March 4, 1991.

**Harold W. Becker,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 91-6055 Filed 3-13-91; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**21 CFR Parts 182 and 184**

**[Docket No. 78N-0335]**

## Glycerophosphates; Tentative Affirmation of Gras Status as Direct Human Food Ingredients

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Tentative final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is tentatively (1) affirming that calcium glycerophosphate is generally recognized as safe (GRAS) for use as a direct human food ingredient in conventional food; (2) removing calcium, manganese, and potassium glycerophosphates from 21 CFR part 182, subpart I, for use as nutrients used in food; and (3) taking no

action with respect to the listing of calcium, manganese, and potassium glycerophosphates in 21 CFR part 182, subpart F, for use as dietary supplements. The safety of these ingredients in food has been evaluated under the comprehensive safety review conducted by the agency. This action is being published as a tentative final rule because the proposal to affirm glycerophosphate published 12 years ago in the **Federal Register** of May 15, 1979 (44 FR 28336). The agency now feels a need to allow comments on the proposed action.

**DATES:** Written comments by May 13, 1991.

**ADDRESSES:** Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Julius Smith, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of May 15, 1979 (44 FR 28336), FDA published a proposal to affirm that calcium glycerophosphate is GRAS for use as a direct human food ingredient in conventional food (44 FR 38336). (FDA is using the term "conventional food" to refer to food that would fall within any of the 43 categories listed in § 170.3(n) (21 CFR 170.3(n)).) The agency also proposed to remove potassium glycerophosphate and manganese glycerophosphate from the list of GRAS ingredients because there were no reported uses for these substances. The proposal was published in accordance with the announced FDA review of the safety of GRAS and prior-sanctioned food ingredients.

In accordance with § 170.35 (21 CFR 170.35), copies of the scientific literature review on glycerophosphates and the report of the Select Committee on GRAS Substances on glycerophosphates are available for public review in the Dockets management Branch (address above). Copies of these documents are also available for public purchase from the National Technical Information Service, as announced in the proposal.

In addition to proposing to affirm the GRAS status of calcium glycerophosphate and to remove manganese and potassium glycerophosphates from the GRAS list, FDA gave public notice that it was unaware of any prior-sanctioned food ingredient uses for these substances other than the uses listed in part 181—Prior-Sanctioned Food Ingredients (21 CFR part 181). Persons asserting additional or extended uses in accordance with approvals granted by the U.S. Department of Agriculture or FDA before September 7, 1958, were given notice to submit proof of those sanctions, so that the safety of any prior-sanctioned uses could be determined. That notice was also an opportunity to have additional prior-sanctioned uses of the glycerophosphates recognized by issuance of an appropriate regulation under part 181 or affirmed as GRAS under part 184 or 186 (21 CFR part 184 or 186), as appropriate. FDA also gave notice that failure to submit proof of any applicable prior sanction in response to the proposal would constitute a waiver of the right to assert that sanction at any future time.

No reports of prior-sanctioned uses for these ingredients were submitted in response to the proposal. Therefore, in accordance with the proposal, any right to assert a prior sanction for uses of these ingredients under conditions different from those set forth in part 181 has been waived.

After FDA published its May 1979 proposal to affirm the GRAS status of calcium glycerophosphate and to remove manganese and potassium glycerophosphates from the GRAS list, the agency, in the **Federal Register** of September 5, 1980 (45 58837), reorganized part 182 to provide separate listings for the use of GRAS ingredients in dietary supplements and for the use of the same ingredients as nutrients in conventional food. The reorganization document stated that creation of these separate lists was intended to facilitate separate reviews of these substances as nutrients and as dietary substances. The reorganization thus resulted in the listing of calcium, manganese, and potassium glycerophosphates on both the GRAS "Dietary Supplements" list (Subpart F of part 182) and the GRAS "Nutrients" list (Subpart I of part 182).

One comment was received in response to the agency's proposal on glycerophosphates. The comment submitted information on the use of manganese glycerophosphate in enteral dietary formulas that are used under medical supervision. The company, a pharmaceutical manufacturer, stated that this use was not included in FDA's survey of food manufacturers for the purpose of determining the specific foods in which various glycerophosphates are used and the levels of usage. The company, therefore, requested that the agency retain manganese glycerophosphate on the GRAS list to permit its continued use in enteral dietary supplement formulas.

As stated above, FDA's May 15, 1979 (44 FR 28336), proposal to affirm that the use of calcium glycerophosphate as a nutrient supplement is GRAS, and to remove manganese and potassium glycerophosphates from the GRAS list, addressed the use of these ingredients in conventional foods (those described in the food categories listed in § 170.3(n)). The proposal did not address the use of these ingredients in dietary supplements or in enteral formulas designed for use under medical supervision in the nutritional management of patients. FDA is not taking any action on the use of the subject glycerophosphates in dietary supplements or enteral formulas because it has only limited information on such uses. Therefore, pending further review of the safety of the use of ingredients in dietary supplements and medical foods, calcium, manganese, and potassium glycerophosphates will continue to be listed for use in dietary supplements in subpart F of part 182.

The agency is issuing this tentative final rule to affirm calcium glycerophosphate as GRAS for use in conventional foods, and to remove calcium, manganese, and potassium glycerophosphates from subpart I of part 182, for use as nutrients. FDA is retaining the listings of calcium, manganese, and potassium glycerophosphates in 21 CFR part 182, subpart F, pending further action on the dietary supplement use of these ingredients.

The format of the tentative final regulation for calcium glycerophosphate is different from the format of the proposed regulation. FDA has modified § 184.1201(c) to make clear that the agency's determination that its GRAS affirmation is based upon current good manufacturing practice (CGMP) conditions of use, including both the technical effect and the food category listed. This change removes the maximum CGMP level of use that the agency included in the proposal. FDA concludes that it is unnecessary to include this level of use in the regulation to assure the safe use of this ingredient.

FDA is modifying this tentative final rule to incorporate the specifications for calcium glycerophosphate that have been published in the Food Chemicals Codex, 3d Ed. (1981), pp. 51–52. No differences exist between these specifications and the specifications that FDA proposed to adopt from the Food Chemicals Codex 2d Ed. (1972), pp. 130–131. This change, therefore, has no substantive effect.

The agency has determined under 21 CFR 25.24(b)(7) that the GRAS affirmation of calcium glycerophosphate

as a direct human food ingredient for use in conventional food under 21 CFR 184.1201 is an action of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The agency has carefully considered the potential environmental effects of removing manganese glycerophosphate and potassium glycerophosphate from the GRAS list for use as nutrients in food (21 CFR part 182, subpart I). FDA has concluded that this action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with the Regulatory Flexibility Act, the agency has considered the potential effects that this rule would have one small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action.

In accordance with Executive Order 12291, FDA has analyzed the potential economic effects of this final rule and determined that the rule is not a major rule as defined by the Order.

The agency's finding of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which may be seen in the Dockets Management Branch.

Interested persons may, on or before May 13, 1991, submit to the Dockets Management Branch written comments regarding this tentative final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading on this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR**

*Part 182*

Food ingredients, Food packaging, Spices and flavorings.

*Part 184*

Food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR parts 182 and 184 are proposed to be amended as follows:

## PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 182 continues to read as follows:

**Authority:** Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

**§§ 182.8201, 182.8455, and 182.8628 [Removed]**

2. Section 182.8201 *Calcium glycerophosphate*, § 182.8455 *Manganese glycerophosphate*, and § 182.8628 *Potassium glycerophosphate* are removed from subpart I.

## PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

3. The authority citation for 21 CFR part 184 continues to read as follows:

**Authority:** Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

4. New § 184.1201 is added to subpart B to read as follows:

**§ 184.1201 Calcium glycerophosphate.**

(a) Calcium glycerophosphate ($C_3H_7CaO_6P$, CAS Reg. No. 27214–00–2) is a fine, white, odorless, almost tasteless, slightly hygroscopic powder. It is prepared by neutralizing glycerophosphoric acid with calcium hydroxide or calcium carbonate. The commercial product is mixture of calcium $\beta$-, and *D*-, and *L*-$\alpha$-glycerophosphate.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), pp. 51–52, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the National Academy Press, 2101 Constitution Avenue NW., Washington, DC 20418, or may be examined at the Office of the Federal Register, 1100 L Street. NW., Washington, DC.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a nutrient supplement as defined in § 170.3(o)(20) of this chapter.

(2) The ingredient is used in gelatins, puddings, and fillings as defined in § 170.3(n)(22) of this chapter.

(d) Prior sanctions for this ingredient different from the uses established in this section or different from that as set forth in part 181 of this chapter, do not exist or have been waived.

Dated: March 5, 1991.

**Fred R. Shank,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 91–5681 Filed 3–13–91; 8:45 am]

BILLING CODE 4160–01–M

## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

## 21 CFR Part 1308

## Schedules of Controlled Substances: Proposed Procedures for Removing Certain Anabolic Steroid Products from All or Part of the Controlled Substances Act

**AGENCY:** Drug Enforcement Administration, Department of Justice.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** On February 27, 1991, any material, compound, mixture, or preparation which contains any quantity of an anabolic steriod will be included in Schedule III of the Controlled Substances Act (CSA). This proposed rule describes procedures designed to implement two provisions of the Anabolic Steroids Control Act of 1990 through which certain products will be exempted from all or part of the CSA. The affected products will be those which are approved for implantation into animals and those which have no significant potential for abuse. When finalized, this proposed action will remove certain regulatory control mechanisms of Schedule III from the manufacture, distribution, and possession of specific products which contain anabolic steroids.

**DATES:** Comments must be submitted on or before April 15, 1991.

**ADDRESSES:** Comments and objections should be submitted to: Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

**FOR FURTHER INFORMATION CONTACT:** Howard McClain, Jr., Chief, Drug and

Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

**SUPPLEMENTARY INFORMATION:** On November 29, 1990, the Anabolic Steroids Control Act of 1990 (title XIX of Pub. L. 101–647) was enacted. The Act requires that anabolic steroids be added to Schedule III of the Controlled Substances Act (CSA) (21 U.S.C. 801 et seq.) on February 27, 1991. The Act also provides that any anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the Secretary of Health and Human Services for such administration not be added to the CSA. Further, the Act provides that if an excluded anabolic steroid is prescribed, dispensed, or distributed for human use it will be a Schedule III substance. To identify the products which are excluded from the CSA and to insure that the exclusion is properly applied, the Administrator of the Drug Enforcement Administration (DEA) herein proposes a procedure through which each product which is approved for administration through implantation in nonhuman species will be identified as excluded from the CSA unless it is prescribed, dispensed, or distributed for human use.

The Anabolic Steroids Control Act provides that the Attorney General, upon the recommendation of the Secretary, may exempt any compound, mixture, or preparation which contains an anabolic steroid from the application of all or any part of the CSA if, because of its concentration, preparation, mixture, or delivery system, it has no significant potential for abuse. The Administrator herein proposes a regulatory procedure through which products will be evaluated and extempted from the registration, prescription limitation, record keeping, labeling, security, import, and export requirements related to Schedule III substances.

Interested persons are invited to submit their comments in writing with regard to this proposal. All correspondence regarding this matter should be submitted to the Administrator, Drug Enforcement Administration, Washington, DC 20537. Attention: DEA Federal Register Representative.

The Administrator of the Drug Enforcement Administration hereby certifies that this proposed rule will have no significant economic impact on entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

This rule is not a major rule for purposes of Executive Order (E.O.) 12291 (46 FR 13193, February 17, 1981). Pursuant to sections 3(c)(3) and 3(e)(2)(C) of E.O. 12291 this proposed rule has been submitted for review to the Office of Management and the Budget.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**List of Subjects in 21 CFR Part 1308**

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by title XIX of Public Law 101–647 and delegated to the Administrator of the DEA by Department of Justice Regulations (28 CFR 0.100), the Administrator hereby proposes that part 1308, chapter II, title 21, Code of Federal Regulations be amended as follows:

## PART 1308—[AMENDED]

1. The authority citation for 21 CFR part 1308 continues to read as follows:

**Authority:** 21 U.S.C. 811, 812, 871(b).

2. An undesignated center heading, § 1308.25, and § 1308.26 are added to read as follows:

Excluded Veterinary Anabolic Steroid Implant Products

### § 1308.25 Exclusion of a veterinary anabolic steroid implant product; application.

(a) Any person seeking to have any anabolic steroid product which is expressly intended for administration through implants to cattle or other nonhuman species and which may be lawfully sold under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 500), identified as being excluded from any schedule, pursuant to section 102(41)(B)(i) of the Act (21 U.S.C. 802(41)(B)(i)), may apply to the Administrator, Drug Enforcement Administration, Department of Justice, Washington, DC 20537.

(b) An application for an exclusion under this section shall contain the following information:

(1) The name and address of the applicant;

(2) The name of the product;

(3) The chemical structural formula or description for any anabolic steroid contained in the product;

(4) A complete description of dosage and quantitative composition of the dosage form;

(5) The conditions of use including whether or not Federal law restricts this product to use by or on the order of a licensed veterinarian;

(6) A description of the delivery system in which the dosage form will be distributed with sufficient detail to identify the product (e.g. 20 cartridge brown plastic belt);

(7) The label and labeling of the immediate container and the commercial containers, if any, of the product;

(8) The name and address of the manufacturer of the dosage form if different from that of the applicant; and

(9) Evidence that the product has been approved by the Secretary of Health and Human Services for administration to cattle or other nonhuman species.

(c) Within a reasonable period of time after the receipt of an application for an exclusion under this section, the Administrator shall notify the applicant of his acceptance or nonacceptance of the application, and if not accepted, the reason therefore. The Administrator need not accept an application for filing if any of the requirements prescribed in paragraph (b) of this section is lacking or is not set forth as to be readily understood. The applicant may amend the application to meet the requirements of paragraph (b) of this section. If the application is accepted for filing, the Administrator shall issue and publish in the **Federal Register** his order on the application, which shall include a reference to the legal authority under which the order is issued and the findings of fact and conclusions of law upon which the order is based. This order shall specify the date on which it shall take effect. The Administrator shall permit any interested person to file written comments on or objections to the order within 60 days of the date of publication of his order in the **Federal Register**. If any such comments or objections raise significant issues regarding any finding of fact or conclusion of law upon which the order is based, the Administrator shall immediately suspend the effectiveness of the order until he may reconsider the application in light of the comments and objections filed. Thereafter, the Administrator shall reinstate, revoke, or amend his original order as he determines appropriate.

(d) The Administrator may at any time revoke or modify any designation

of excluded status granted pursuant to this section by following the procedures set forth in paragraph (c) of this section for handling an application for an exclusion which has been accepted for filing.

**§ 1308.26 Excluded veterinary anabolic steroid implant products.**

(a) The following anabolic steroid-containing products which are expressly intended for administration through implants to cattle or other nonhuman species and which may be lawfully sold under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 500) are excluded from all schedules pursuant to section 102(41)(B)(i) of the Act (21 U.S.C. 802(41)(B)(i)):

TABLE OF EXCLUDED VETERINARY ANABOLIC STEROID IMPLANT PRODUCTS

| Company | Trade name | NDC code | Delivery system | Ingredients | Quantity |
|---|---|---|---|---|---|
| [Reserved] | | | | | |

(b) In accordance with section 102(41)(B)(ii) of the Act (21 U.S.C. 802(41)(B)(ii)) if any person prescribes, dispenses, or distributes a product listed in paragraph (a) of this section for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of section 102(41)(A) of the Act (21 U.S.C. 802(41)(A)).

3. An undesignated centerheading, § 1308.33, and § 1308.34 are added to read as follows:

Exempt Anabolic Steroid Products

**§ 1308.33 Exemption of certain anabolic steroid products; application.**

(a) The Administrator, upon the recommendation of the Secretary of Health and Human Services, may, by regulation, exempt from the application of all or any part of the Act any compound, mixture or preparation containing an anabolic steroid as defined in § 1308.02 if, because of its concentration, preparation, mixture or delivery system, it has no significant potential for abuse (Pub. L. 101–647, section 1903(a)).

(b) Any person seeking to have any compound, mixture, or preparation containing an anabolic steroid as defined in § 1308.02 exempted from the application of all or any part of the Act, pursuant to paragraph (a) of this section, may apply to the Administrator, Drug Enforcement Administration, Department of Justice, Washington, DC 20537.

(c) An application for an exemption under this section shall contain the following information:

(1) The name and address of the applicant;

(2) The name of the product;

(3) The chemical structural formula or description for any anabolic steroid contained in the product;

(4) The complete description of dosage and quantitative composition of the dosage form;

(5) A description of the delivery system, if applicable;

(6) The indications and conditions for use in which species, including whether or not this product is a prescription drug;

(7) Information to facilitate identification of the dosage form, such as shape, color, coating, and scoring;

(8) The label and labeling of the immediate container and the commercial containers, if any, of the product;

(9) The units in which the dosage form is ordinarily available; and

(10) The facts which the applicant believes justify a determination that the product has no significant potential for abuse and a granting of an exemption under this section.

(d) Within a reasonable period of time after the receipt of the application for an exemption under this section, the Administrator shall notify the applicant of his acceptance or nonacceptance of the application, and if not accepted, the reason therefore. The Administrator need not accept an application for filing if any of the requirements prescribed in paragraph (c) of this section is lacking or is not set forth so as to be readily understood. The applicant may amend the application to meet the requirements of paragraph (c) of this section. If accepted for filing, the Administrator will request from the Secretary for Health and Human Services his recommendation, as to whether such product which contains an anabolic steroid should be considered for exemption from certain portions of the Controlled Substances Act. On receipt of the recommendation of the Secretary, the Administrator shall make a determination as to whether the evidence submitted or otherwise available sufficiently establishes that the product possesses no significant potential for abuse. The Administrator shall issue and publish in the **Federal Register** his order on the application, which shall include a reference to the legal authority under which the order is issued, and the findings of fact and conclusions of law upon which the order is based. This order shall specify the date on which it shall take effect. The Administrator shall permit any interested person to file written comments on or objections to the order within 60 days of the date of publication of his order in the **Federal Register**. If any such comments or objections raise significant issues regarding any finding of fact or conclusion of law upon which the order is based, the Administrator shall immediately suspend the effectiveness of the order until he may reconsider the application in light of the comments and objections filed. Thereafter, the Administrator shall reinstate, revoke, or amend his original order as he determines appropriate.

(e) The Administrator may revoke any exemption granted pursuant to section 1903(a) of Public Law 101–647 by following the procedures set forth in paragraph (d) of this section for handling an application for an exemption which has been accepted for filing.

**§ 1308.34 Exempt Anabolic Steroid Products.**

The following anabolic steroid containing compounds, mixtures, or preparations have been exempted by the Administrator from application of sections 302 through 309 and 1002 through 1004 of the Act (21 U.S.C. 822–829 and 952–954) and §§ 1301.24, 1301.31, 1301.32, and 1301.71 through 1301.76 of this chapter for administrative purposes only:

TABLE OF EXEMPT ANABOLIC STEROID PRODUCTS

| Company | Trade name | NDC code | Dosage form | Ingredients | Quantity |
|---|---|---|---|---|---|
| [Reserved] | | | | | |

Dated: February 12, 1991.

**Robert C. Bonner,**

*Administrator, Drug Enforcement Administration.*

[FR Doc. 91–5978 Filed 3–13–91; 8:45 am]

BILLING CODE 4410–09–M

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### 29 CFR Part 1610

### Availability of Records

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Notice of proposed rulemaking; revision.

**SUMMARY:** The Equal Employment Opportunity Commission (EEOC) proposes to revise its Freedom of Information Act (FOIA) regulations to include procedures for obtaining records maintained under the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*, and predisclosure notification procedures for confidential commercial information. The Commission also proposes several nonsubstantive administrative changes.

**DATES:** Comments must be submitted on or before April 15, 1991.

**ADDRESSES:** Comments should be submitted to: Executive Officer, room 10402, EEOC, 1801 L Street, NW., Washington, DC 20507.

Copies of this notice of proposed rulemaking are available in the following alternate formats: Large print, braille, electronic file on computer disk, and audio-tape. Copies may be obtained from the Office of Equal Employment Opportunity by calling (202) 663–4395 (voice) or (202) 663–4399 (TDD).

**FOR FURTHER INFORMATION CONTACT:** Nicholas M. Inzeo, Acting Associate Legal Counsel, Kathy Oram, Senior Attorney, or Maia Caplan, Attorney, (202) 663–4669 (voice) or (202) 663–7026 (TDD).

**SUPPLEMENTARY INFORMATION:** The Commission proposes to revise its regulations under the Freedom of Information Act, 5 U.S.C. 552, to encompass records maintained pursuant to the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 *et seq.* On July 26, 1990, President Bush signed the ADA, effective July 26, 1992, which prohibits discrimination against individuals with disabilities and empowers the Commission to accept and investigate charges of discrimination. The revised regulations establish procedures for requesting access to records related to charges filed under the ADA.

The proposed regulations also add a new § 1610.19 on predisclosure notification procedures for confidential commercial information. Section 1610.19 conforms this part to the requirements of Executive Order No. 12600, and to the Commission's practice since the issuance of the Executive Order. The prior §§ 1610.19 and 1610.20 are numbered as §§ 1610.20 and 1610.21, respectively.

A number of other clarifying changes are proposed, including updating the addresses of Commission field offices and codifying the Commission's practice of remanding appeals for charge file information to the appropriate Regional Attorney when the Commission closes charge files during the interim between an initial denial by a field office and consideration of an appeal by the Office of Legal Counsel. Owing to an organizational change, the term Deputy Legal Counsel is replaced with the term Legal Counsel or designee.

For the Commission,

**Evan J. Kemp, Jr.,**

*Chairman.*

Accordingly, it is proposed to amend 29 CFR part 1610 as follows.

1. The authority citation for 29 CFR part 1610 continues to read as follows:

**Authority:** Sec. 713(a), 78 Stat. 265, 42 U.S.C. 2000e–12(a), 5 U.S.C. 552, as amended by Pub. L. 93–502 and Pub. L. 99–570; for § 1610.15, nonsearch or copy portions are issued under 31 U.S.C. 483a.

2. Section 1610.4 is amended by revising paragraph (c) to read as follows:

**§ 1610.4 Public reference facilities and current index.**

* * * * *

(c) The Commission's field offices are:

Albuquerque Area Office (Phoenix District), Western Bank Building, suite 1105, 505 Marquette, NW., Albuquerque, New Mexico 87102–2189.

Atlanta District Office, Citizens Trust Bank Building, suite 1100, 75 Piedmont Avenue, NE., Atlanta, Georgia 30335.

Baltimore District Office, 111 Market Place, suite 4000, Baltimore, Maryland 21202.

Birmingham District Office, 1900 3rd Avenue, North, suite 101, Birmingham, Alabama 35203–2397.

Boston Area Office (New York District), 1 Congress Street, suite 100, Boston, Massachusetts 02114.

Buffalo Local Office (New York District), 28 Church Street, room 301, Buffalo, New York 14202.

Charlotte District Office, 5500 Central Avenue, Charlotte, North Carolina 28212.

Chicago District Office, Federal Building, room 930A, 536 South Clark Street, Chicago, Ilinois 60605.

Cincinnati Area Office (Cleveland District), 550 Main Street, room 7015, Cincinnati, Ohio 45202.

Cleveland District Office, 1375 Euclid Avenue, room 600, Cleveland, Ohio 44115.

Dallas District Office, 8303 Elmbrook Drive, Dallas, Texas 75247.

Denver District Office, 1845 Sherman Street, 2nd Floor, Denver, Colorado 80203.

Detroit District Office, 477 Michigan Avenue, room 1540, Detroit, Michigan 48226.

El Paso Area Office (San Antonio District), The Commons, Building C, suite 100, 4171 North Mesa Street, El Paso, Texas 77902.

Fresno Local Office (San Francisco District), 1313 P Street, suite 103, Fresno, California 93721.

Greensboro Local Office (Charlotte District), 324 West Market, room B–27, P.O. Box 3363, Greenboro, North Carolina 27402.

Greenville Local Office (Charlotte District), 300 East Washington Street, suite B41, Greenville, South Carolina 29601.

Honolulu Local Office (San Francisco District), 677 Ala Moana Boulevard, suite 404, P.O. Box 50082, Honolulu, Hawaii 96813.

Houston District Office, 1919 Smith Street, 7th Floor, Houston, Texas 77002.

Indianapolis District Office, 46 East Ohio Street, room 456, Indianapolis, Indiana 46204.

Jackson Area Office (Birmingham District), 207 West Amite Street, Jackson, Mississippi 39201.

Kansas City Area Office (St. Louis District), 911 Walnut Street, 10th Floor, Kansas City, Missouri 64106.

Little Rock Area Office (Memphis District), 320 West Capitol Avenue, suite 621, Little Rock, Arkansas 72201.

Los Angeles District Office, 3660 Wilshire Boulevard, 5th Floor, Los Angeles, California 90010.

Louisville Area Office (Indianapolis District), 601 West Broadway, room 613, Louisville, Kentucky 40202.

Memphis District Office, 1407 Union Avenue, suite 621, Memphis, Tennessee 38104.

Miami District Office, 1 Northeast First Street, 6th Floor, Miami, Florida 33132.

Milwaukee District Office, 310 West Wisconsin Avenue, suite 800, Milwaukee, Wisconsin 53203.

Minneapolis Local Office (Milwaukee District), 220 Second Street South, room 108, Minneapolis, Minnesota 55401–2141.

Nashville Area Office (Memphis District), 50 Vantage Way, suite 202, Nashville, Tennessee 37228.

Newark Area Office (Philadelphia District), 60 Park Place, room 301, Newark, New Jersey 07102.

New Orleans District Office, 701 Loyola Avenue, suite 600, New Orleans, Louisiana 70113.

New York District Office, 90 Church Street, room 1501, New York, New York 10007.

Norfolk Area Office (Baltimore District), Systems Management of America (SMA) Building, 252 Monticello Avenue, 1st Floor, Norfolk, Virginia 23510.

Oakland Local Office (San Francisco District), 1333 Broadway, room 430, Oakland, California 94612.
Oklahoma Area Office (Dallas District), 531 Couch Drive, Oklahoma City, Oklahoma 73102.
Philadelphia District Office, 1421 Cherry Street, 10th Floor, Philadelphia, Pennsylvania 19102.
Phoenix District Office, 4520 North Central Avenue, Suite 300, Phoenix, Arizona 85012–1848.
Pittsburgh Area Office (Philadelphia District), 1000 Liberty Avenue, room 2038–A, Pittsburgh, Pennsylvania 15222.
Raleigh Area Office (Charlotte District), 1309 Annapolis Drive, Raleigh, North Carolina 27608–2129.
Richmond Area Office (Baltimore District), 400 North 8th Street, room 7026, Richmond, Virginia 23240.
San Antonio District Office, 5410 Fredericksburg Road, suite 200, San Antonio, Texas 78229.
San Diego Local Office (Los Angeles District), 880 Front Street, room 4S–21, San Diego, California 92188.
San Francisco District Office, 901 Market Street, suite 500, San Francisco, California 94103.
San Jose Local Office (San Francisco District), 280 South First Street, room 4150, San Jose, California 95113.
Savannah Local Office, 10 Whitaker Street, suite B, Savannah, Georgia 31401.
Seattle District Office, 2815 Second Avenue, suite 500, Seattle, Washington 98121.
St. Louis District Office, 625 North Euclid Street, 5th Floor, St. Louis, Missouri 63018.
Tampa Area Office (Miami District), 501 East Polk Street, 10th Floor, Tampa, Florida 33602.
Washington Field Office, 1400 L Street, NW., suite 200, Washington, DC 20005.

**§ 1610.5 [Amended]**

3. Section 1610.5 is amended by removing paragraph (d).

**§ 1610.7 [Amended]**

4. Section 1610.7 is amended by revising (a) to read as follows:

**§ 1610.7 Where to make request; form.**

(a) Requests for the following types of records shall be submitted to the regional attorney for the pertinent district, area or local office, at the district office address listed in § 1610.4(c) or, in the case of the Washington Field Office, shall be submitted to the regional attorney in the Baltimore District Office at the address listed in § 1610.4(c):

(1) Information about current or former employees of a field office

(2) Existing non-confidential statistical data related to the case processing of a field office.

(3) Agreements between the Commission and state or local fair employment agencies operating within the jurisdiction of a field office; or

(4) Materials in field office investigative files related to charges under: Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq;* The Equal Pay Act (29 U.S.C. 206(d)); the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 *et seq.*); or, the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

* * * * *

**§ 1610.7 [Amended]**

5. Sections 1610.7, 1610.8, 1610.9, 1610.13, and 1610.14 are amended by removing the words "Deputy Legal Counsel" and adding, in their place, the words "Legal Counsel."

6. Section 1610.9 is amended by adding paragraph (a)(4) to read as follows:

**§ 1610.9 Prompt response.**

(a) * * *

(4) The Commission is required to provide notification of the request to a commercial submitter pursuant to § 1610.19 of this subpart.

* * * * *

7. Section 1610.10 is amended by revising paragraphs (a) and (b) as follows:

**§ 1610.10 Responses: form and content.**

(a) Once a requested record is identified and available, the requester will be notified of when and where the record will be made available and the cost assessed for processing the request. Fees for processing requests will be determined in accordance with the schedule set forth in § 1610.15. Checks shall be made payable to the Treasurer of the United States.

(b) A reply denying a written request for a record shall be in writing, signed by the Legal Counsel, designee, or the appropriate regional attorney, and shall include:

(1) His or her name and title;

(2) A reference to the specific exemption under the Freedom of Information Act authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld, or a statement that, after diligent effort, the requested records have not been found or have not been adequately examined during the time allowed under § 1610.9(a), and that the denial will be reconsidered as soon as the search or examination is complete; and

(3) a statement that the denial may be appealed to the Commission within 30 days of receipt of the denial or partial denial.

* * * * *

8. Section 1610.11 is amended as follows:

(a) Paragraph (a) is revised by removing the words "Deputy Legal Counsel or designee" and replace it with "Legal Counsel's designee.

(b) Paragraph (f) is added to read as follows:

**§ 1610.11 Appeals to the Commission from initial denials.**

(f) In the event that the Commission closes its charge file during the interim between an initial denial by the field office and consideration of the requester's appeal by the Legal Counsel's designee, the designee may remand the request to the appropriate Regional Attorney for redetermination. The requester retains a right to appeal to the Legal Counsel or designee from the decision on remand.

9. Section 1610.17 is amended as follows:

(a) Paragraphs (f) and (g) are redesignated as paragraphs (g)(h).

(b) Paragraph (f) is added to read as follows:

**§ 1610.17 Exemptions.**

* * * * *

(f) Section 107 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) explicitly adopts the powers, remedies, and procedures set forth in title VII, including those contained in sections 706(b) and 709. Accordingly, the prohibitions on disclosure outlined in subsections (b)(, (c), (d), and (e), apply with equal force to requests for information related to charges filed with, or investigations by, the Commission under the Americans with Disabilities Act.

10. Section 1610.18 is revised to read as follows:

**§ 1610.18 Information to be disclosed.**

The Commission will provide the following information to the public:

(a) The Commission will make available for inspection and copying certain tabulations of aggregate industry, area, and other statistics derived from the Commission's reporting programs authorized by section 709(c) of title VII, provided that such tabulations: Were previously compiled by the Commission and are available in documentary form; comprise an aggregation of data from not less than three responding entities; and, do not reveal the identity of an individual or

dominant entity in a particular industry or area;

(b) All blank forms used by the Commission;

(c) Subject to the restrictions and procedures set forth in § 1610.19, all signed contracts, final bids on all signed contracts, and agreements between the Commission and state or local agencies charged with the administration of state or local fair employment practices laws;

(d) All final reports that do not contain statutorily confidential material in a recognizable form;

(e) All Agency correspondence to members of the public, Members of Congress, or other persons not government employees or special government employees, except those containing information that would produce an invasion of privacy if made public;

(f) All administrative staff manuals and instructions to staff that affect members of the public unless the materials are promptly published and copies offered for sale; and

(g) All final votes of each Commissioner, for every Commission meeting, except for votes pertaining to filing suit against respondents until such litigation is commenced.

11. Section 1610.20 is redesignated § 1610.21.

12. Section 1610.19 is redesignated § 1610.20.

13. Section 1610.19 is added to read as follows:

**§ 1610.19 Predisclosure Notification Procedures for Confidential Commercial Information.**

(a) *In general.* Commercial information provided to the Commission shall not be disclosed except in accordance with this section. For the purposes of this section, the following definitions apply:

(1) "Confidential commercial information" refers to records provided by a submitter containing information that is arguably exempt from disclosure under 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) "Submitter" refers to any person or entity who provides confidential commercial information to the government. The term includes, but is not limited to, corporations, state governments, and foreign governments.

(b) *Notice to submitter.* Except as provided in paragraph (g) of this section, the Commission shall provide a submitter with explicit notice of a FOIA request for confidential commercial records whenever:

(1) The Commission reasonably believes that disclosure could cause substantial competitive harm to the submitter;

(2) The information was submitted prior to January 1, 1988, the records are less than 10 years old, and the submitter designated them as commercially sensitive; or

(3) The information was submitted after January 1, 1988, and the submitter previously, in good faith, designated the records as confidential commercial information. Such designations shall:

(i) require the support of a statement or certification from an officer or authorized representative of the company that the information is in fact confidential commercial information and has not been disclosed to the public; and

(ii) expire ten years from the date of submission unless otherwise justified.

(c) *Notice to requester.* When notice is given to a submitter under this section, the requester shall be notified that notice and opportunity to comment are being provided to the submitter.

(d) *Opportunity of submitter to object.* When notification is made pursuant to paragraph (b) of this section, the Commission shall afford the submitter seven working days to provide it with a detailed statement of objections to disclosure. Such statement shall provide precise identification of the exempted information, and the basis for claiming it as a trade secret or as confidential information pursuant to 5 U.S.C. 552(b)(4), the disclosure of which is likely to cause substantial harm to the submitter's competitive position.

(e) *Notice of intent to disclose.* (1) The Commission shall consider carefully the objections of a submitter provided pursuant to paragraph (d) of this section. When the Commission decides to disclose information despite such objections, it shall provide the submitter with a written statement briefly explaining why the objections were not sustained. Such statement shall be provided seven working days prior to the specified disclosure date, in order that the submitter may seek a court injunction to prevent release of the records if it so chooses.

(2) When a submitter is notified pursuant to paragraph (e)(1) of this section, notice of the Commission's final disclosure determination and proposed release date shall also be provided to the requester.

(f) *Notice of lawsuit.* Whenever a requester brings suit seeking to compel disclosure of confidential commercial information, the Commission shall promptly notify the submitter of the legal action.

(g) *Exceptions to the notice requirement.* The notice requirements of this section shall not apply if:

(1) The Commission determines that the information shall not be disclosed;

(2) The information is published or otherwise officially available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

[FR Doc. 91-5912 Filed 3-13-91; 8:45 am]
BILLING CODE 6570-06-M

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## 29 CFR Part 1611

## Privacy Act of 1974

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Equal Employment Opportunity Commission is proposing to revise its regulations at 29 CFR part 1611 which implement the Privacy Act of 1974. These regulations set forth the procedures whereby individuals can request information about, access to, or amendments of records pertaining to them that are contained in a system of records established or maintained by the Commission. They also set forth the procedures to be followed in processing those requests. The proposed amendments update the regulations, delegate authority, clarify the appeal process and exempt two EEOC systems of records from some of the Act's requirements.

**DATES:** Written comments on the proposed regulations must be received on or before May 13, 1991. The Commission proposes to consider any comments received and thereafter adopt final regulations.

**ADDRESSES:** Comments should be addressed to the Office of Executive Secretariat, Equal Employment Opportunity Commission, room 10402, 1801 L Street, NW., Washington, DC 20507. Copies of comments submitted by the public will be available for review at the Commission's library, room 6502, 1801 L Street, NW., Washington, DC 20507 between the hours of 9:30 a.m. and 5:00 p.m.

Copies of this notice of proposed rulemaking are available in the following alternate formats: Large print, braille, electronic file on computer disk, and audio-tape. Copies may be obtained from the Equal Employment Opportunity by calling (202) 663-4395 (voice) or (202) 663-4399 (TDD).

**FOR FURTHER INFORMATION CONTACT:** Nicholas M. Inzeo, Acting Associate Legal Counsel, Thomas J. Schlageter, Acting Assistant Legal Counsel or Kathleen Oram, Senior Attorney, at (202) 663-4670 (voice) or (202) 663-7026 (TDD).

**SUPPLEMENTARY INFORMATION:** Pursuant to section (f) of the Privacy Act of 1974, 5 U.S.C. 552a(f), each agency that maintains a system of records must promulgate rules in accordance with the Administrative Procedure Act, 5 U.S.C. 553, establishing procedures and requirements for carrying out the provisions of the Privacy Act. Accordingly, the Commission is publishing proposed amendments to its Privacy Act regulations in order to update them and to make other administrative and editorial changes.

The Commission proposes to amend § 1611.14 of its regulations in order to exempt government-wide system EEOC/GOVT-1 from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Privacy Act. Section (k) of the Privacy Act allows an agency to exempt any system of records from the above-referenced subsections of the Act if it consists of "investigatory material compiled for law enforcement purposes." 5 U.S.C. 552(b)(2). The files in this system contain information obtained by federal agencies in the course of investigations of alleged violations of title VII of the Civil Rights Act of 1964 42 U.S.C. 2000e-16, the Age Discrimination in Employment Act of 1967, 29 U.S.C. 633a, the Equal Pay Act of 1963, 29 U.S.C. 206(d), and the Rehabilitation Act of 1973, 29 U.S.C. 791 and 794(a). In some instances, agencies obtain information regarding unlawful employment practices other than those complained of by the individual who is the subject of the file. It would impede the law enforcement activities of the agencies and the Commission to apply the disclosure and amendment provisions of the Privacy Act to these files. Subject individuals know that the Commission or agency is maintaining a file and receive a copy of it at the end of the investigation of the complaint pursuant to 29 CFR 1613.220. Subject individuals already have the opportunity to submit evidence and argument contradicting or commenting upon the records in the file; a right to correct or amend such records under the Act would be inconsistent with the law enforcement function and would undermine the integrity of the administrative record. Thus, the Commission has determined that not exempting system EEOC/GOVT-1 from the above named subsections of the Privacy Act would impede the agency's law enforcement efforts.

The Commission also proposes to extend the existing exemption for system EEOC-1 to include exemption from sections (e)(4)(G) and (e)(4)(I) of the Privacy Act in order to parallel the exemption for system EEOC-3.

A number of administrative and technical changes are also proposed. The Commission proposes to delegate authority for processing appeals under the Privacy Act from the Chairman of the Commission to the Legal Counsel or the Legal Counsel's designee. The Commission proposes to clarify the procedures for requests and appeals pertaining to records maintained in system EEOC/GOVT-1, EEOC's only government-wide system of records. The Commission proposes to add the locations of EEOC maintained records covered by General Services Administration, Merit Systems Protection Board, Office of Government Ethics and Department of Labor government-wide systems and to provide information regarding how and where to appeal denials under those systems. The proposed regulations change the charge for copying of documents from $.05 per page to $.15 per page to conform with the Commission's Freedom of Information Act regulation, 29 CFR 1610.15.

**List of Subjects in 29 CFR Part 1611**

Privacy Act.

For the Commission.

**Evan J. Kemp, Jr.,**

*Chairman.*

Accordingly, it is proposed to amend 29 CFR part 1611 as follows:

## PART 1611—PRIVACY ACT REGULATIONS

1. The citation authority for part 1611 continues to read as follows:

Authority: 5 U.S.C. 552a.

2. Section 1611.1 is revised to read as follows:

**§ 1611.1 Purpose and scope.**

This part contains the regulations of the Equal Employment Opportunity Commission (the Commission) implementing the Privacy Act of 1974, 5 U.S.C. 552a. It sets forth the basic responsibilities of the Commission under the Privacy Act (the Act) and offers guidance to members of the public who wish to exercise any of the rights established by the Act with regard to records maintained by the Commission. All records contained in system EEOC/GOVT-1, including those maintained by other agencies, are subject to the Commission's Privacy Act regulations. Requests for access to, an accounting of disclosures for, or amendment of records in EEOC/GOVT-1 must be processed by agency personnel in accordance with this part. Commission records that are contained in a government-wide system of records established by the U.S. Office of Personnel Management (OPM), the General Services Administration (GSA), the Merit Systems Protection Board (MSPB), the Office of Government Ethics (OGE) or the Department of Labor (DOL) for which those agencies have published systems notices are subject to the publishing agency's Privacy Act regulations. Where the government-wide systems notices permit access to these records through the employing agency, an individual should submit requests for access to, for amendment of or for an accounting of disclosures to the Commission offices as indicated in § 1611.3(b).

3. Section 1611-3 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 1611-3 Procedures for requests pertaining to individual records in a record system.**

(a) Any person who wishes to be notified if a system of records maintained by the Commission contains any record pertaining to him or her, or to request access to such record or to request an accounting of disclosures made of such record, shall submit a written request, either in person or by mail, in accordance with the instructions set forth in the system notice published in the **Federal Register**. The request shall include:

(1) The name of the individual making the request;

(2) The name of the system of records (as set forth in the system notice to which the request relates);

(3) Any other information specified in the system notice; and

(4) When the request is for access to records, a statement indicating whether the requester desires to make a personal inspection of the records or be supplied with copies by mail.

(b) Requests pertaining to records contained in a system of records established by the Commission and for which the Commission has published a system notice should be submitted to the person or office indicated in the system notice. Requests pertaining to Commission records contained in the government-wide systems of records listed below should be submitted as follows:

(1) For systems OPM/GOVT–1 (General Personnel Records), OPM/GOVT–2 (Employee Performance File System Records), OPM/GOVT–3 (Records of Adverse Actions and Actions Based on Unacceptable Performance), OPM/GOVT–5 (Recruiting, Examining and Placement Records), OPM/GOVT–6 (Personnel Research and Test Validiation Records), OPM/GOVT–9 (Files on Position Classification Appeals, Job Grading Appeals and Retained Grade or Pay Appeals), OPM/GOVT–10 (Employee Medical File Sytem Records) and DOL/ESA–13 (Office of Workers' Compensation Programs, Federal Employees' Compensation File), to the Director of Personnel Management Services, EEOC, 1801 L St, NW., Washington, DC 20507;

(2) For systems OGE/GOVT–1 (Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records), OGE/GOVT–2 (Confidential Statements of Employment and Financial Interests), and MSPB/GOVT–1 (Appeals and Case Records), to the Legal, Counsel, EEOC, 1801 L Street, NW., Washington, DC. 20507;

(3) For system OPM/GOVT–7 (Applicant Race, Sex, National Origin, and Disability Status Records), to the Director of the Office of Equal Employment Opportunity, EEOC, 1801 L St., NW., Washington, DC 20507;

(4) For systems GSA/GOVT–3 (Travel Charge Card Program) and GSA/GOVT–4 (Contracted Travel Services Program) to the Director of Financial and Resource Management Services, EEOC, 1801 L St., NW., Washington, DC 20507.

* * * * *

4. Section 1611.5 is amended as follows:

(a) Paragraph (a)(5) is amended by removing the words "or § 1611.14."

(b) Paragraphs (c) and (d) are revised to read as follows:

**§ 1611.5 Disclosure of requested information to individuals.**

* * * * *

(c) If a request for access to records is denied pursuant to paragraph (a) or (b) of this section, the determination shall specify the reasons for the denial and advise the individual how to appeal the denial. If the request pertains to a system of records for which the Commission has published a system notice, any appeal must be submitted in writing to the Legal Counsel, EEOC, 1801 L Street, NW., Washington, DC 20507. If the request pertains to a government-wide system of records any appeal should be in writing, identified as a Privacy Act appeal and submitted as follows:

(1) For systems established by OPM and for which OPM has published a system notice, to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, OPM, 1900 E St., NW., Washington, DC 20415. The OPM Privacy Act regulations, 5 CFR 297.207, shall govern such appeals.

(2) For systems established by OGE and for which OGE has published a system notice, to the Privacy Act Officer, Office of Government Ethics, 1201 New York Avenue, NW., Suite 500, Washington, DC 20005–3917. The OGE Privacy Act regulations, 5 CFR part 2606 shall govern such appeals.

(3) For the system established by MSPB and for which MSPB has published a system notice, to the Deputy Executive Director for Management, U.S. Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419. The MSPB Privacy Act regulations, 5 CFR part 1205 shall govern such appeals.

(4) For systems established by GSA and for which GSA has published a system notice, to GSA Privacy Act Officer, General Services Administration (ATRAI), Washington, DC 20405. The GSA Privacy Act regulations, 41 CFR 105–64.301–5, shall govern such appeals.

(5) For the system established by DOL and for which DOL has published a system notice, to the Solicitor of Labor, Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The DOL Privacy Act regulations, 29 CFR 70a.9, shall govern such appeals.

(d) In the event that access to a record is denied on appeal by the Legal Counsel or the Legal Counsel's designee, the requestor shall be advised of his or her right to bring a civil action in federal district court for review on the denial in accordance with 5 U.S.C. 552a(g).

6. Section 1611.7(c) is amended to remove the words "Civil Service Commission's" and add, in their place, the word "OPM's."

7. Section 1611.8 is amended as follows:

(a) Paragraph (a)(2) is amended by removing the word "Chairman" and adding, in its place, the words "Legal Counsel."

(b) Paragraphs (d) and (e) are revised to read as follows:

**§ 1611.8 Agency review of request for correction or amendment to record.**

* * * * *

(d) In the event that the Commission receives a notice of correction or amendment from another agency that pertains to records maintained by the Commission, the Commission shall make the appropriate correction or amendment to its records and comply with paragraph (a)(1)(iii) of this section.

(e) Requests for amendment or correction of records maintained in the government-wide systems of records listed in § 1611.5(c) shall be governed by the appropriate agency's regulations cited in that paragraph. Requests for amendment or correction of records maintained by other agencies in system EEOC/GOVT–1 shall be governed by the Commission's regulations in this part.

9. Section 1611.9 is revised to read as follows:

**§ 1611.9 Appeal of initial adverse agency determination on correction or amendment.**

(a) If a request for correction or amendment of a record in a system of records established by EEOC is denied, the requester may appeal the determination in writing to the Legal Counsel, EEOC, 1801 L Street, NW., Washington, DC 20507. If the request pertains to a record that is contained in the government-wide systems of records listed in § 1611.5(c), and appeal must be made in accordance with the appropriate agency's regulations cited in that paragraph.

(b) The Legal Counsel or the Legal Counsel's designee shall make a final determination with regard to an appeal submitted under paragraph (a) of this section not later than 30 working days from the date on which the individual requests a review, unless for good cause shown, this 30-day period is extended and the requester is notified of the reasons for the extension and of the estimated date on which a final determination will be made. Such extensions will be used only in exceptional circumstances and will not normally exceed 30 working days.

(c) In conducting the review of an appeal submitted under paragraph (a) of this section, the Legal Counsel or the Legal Counsel's designee shall be guided by the requirements of 5 U.S.C. 552a(e).

(d) If the Legal Counsel or the Legal Counsel's designee determines to grant all or any portion of a request on an appeal submitted under paragraph (a) of this section, he or she shall so inform the requester, and the appropriate Commission official shall comply with the procedures set forth in § 1611.8(a)(1)(ii) and (iii).

(e) If the Legal Counsel or the Legal Counsel's designee determines in accordance with paragraphs (b) and (c) of this section not to grant all or any portion of a request on an appeal submitted under paragraph (a) of this

section, he or she shall inform the requester:

(1) Of this determination and the reasons for it;

(2) Of the requester's right to file a concise statement of reasons for disagreement with the determination of the Legal Counsel or the Legal Counsel's designee;

(3) That such statements of disagreement will be made available to anyone to whom the record is subsequently disclosed, together with (if the Legal Counsel or the Legal Counsel's designee deems it appropriate) a brief statement summarizing the Legal Counsel or the Legal Counsel's designee's reasons for refusing to amend the record;

(4) That prior recipients of the disputed record will be provided with a copy of the statement of disagreement together with (if the Legal Counsel or the Legal Counsel's designee deems it appropriate) a brief statement of the Legal Counsel or the Legal Counsel's designee's reasons for refusing to amend the record, to the extent that an accounting of disclosure is maintained under 5 U.S.C. 552a(c); and

(5) Of the requester's right to file a civil action in federal district court to seek a review of the determination of the Legal Counsel or the Legal Counsel's designee in accordance with 5 U.S.C. 552a(g).

(f) The Legal Counsel or the Legal Counsel's designee shall ensure that any statements of disagreement submitted by a requestor are made available or distributed in accordance with paragraphs (e) (3) and (4) of this section.

**§ 1611.11 [Amended]**

10. Section 1611.11(a)(1) is amended to remove the words "copies made by photocopy device or otherwise (per page), $.05." and add, in their place, the words "photocopies (per page), $.15."

**§ 1611.13 [Removed]**

11. Section 1611.13 is removed.

**§ 1611.14 [Redesignated as § 1611.13 and revised]**

12. Section 1611.14 is redesignated as § 1611.13 and revised to read as follows:

**§ 1611.13 Specific exemptions.**

Pursuant to subsection (k)(2) of the Act, 5 U.S.C. 552a(k)(2), systems EEOC–1 (Age and Equal Pay Act Discrimination Case Files), EEOC–3 (title VII and Americans With Disabilities Act Discrimination Case Files) and EEOC/GOVT–1 (Equal Employment Opportunity Complaint Records and Appeal Records) are exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Act. The Commission has determined to exempt these systems from the above named provisions of the Privacy Act for the following reasons:

(a) The files in these systems contain information obtained by the Commission and other Federal agencies in the course of investigations of charges and complaints that violations of title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Equal Pay Act, the Americans With Disabilities Act and the Rehabilitation Act have occurred. In some instances, agencies obtain information regarding unlawful employment practices other than those complained of by the individual who is the subject of the file. It would impede the law enforcement activities of the Commission and other agencies for these provisions of the Act to apply to such records.

(b) The subject individuals of the files in these systems know that the Commission or their employing agencies are maintaining a file on their charge or complaint, and the general nature of the information contained in it.

(c) Subject individuals of the files in each of these systems have been provided a means of access to their records by the Freedom of Information Act. Subject individuals of the charge files in system EEOC–3 have also been provided a means of access to their records by section 83 of the Commission's Compliance Manual. Subject individuals of the case files in system EEOC–GOVT–1 have also been provided a means of access to their records by the Commission's Equal Employment Opportunity in the Federal Government regulation, 29 CFR 1613.220.

(d) Many of the records contained in system EEOC/GOVT–1 are obtained from other systems of records. If such records are incorrect, it would be more appropriate for an individual to seek to amend or correct those records in their primary filing location so that notice of the correction can be given to all recipients of that information.

(e) Subject individuals of the files in each of these systems have access to relevant information provided by the allegedly discriminating employer as part of the investigatory process and are given the opportunity to explain or contradict such information and to submit any responsive evidence of their own. To allow such individuals the additional right to amend or correct the records submitted by the allegedly discriminating employer would undermine the investigatory process and destroy the integrity of the administrative record.

(f) The Commission has determined that the exemption of these three systems from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Privacy Act is necessary for the agency's law enforcement efforts.

[FR Doc. 91–5911 Filed 3–13–91; 8:45 am]
BILLING CODE 6750–06–M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

**CGD1 90–191**

### Safety Zone: Connecticut River, Middletown, CT.

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rule making.

**SUMMARY:** The Coast Guard is considering a proposal to establish a safety zone on the Connecticut River between Middletown, CT and Portland, CT on the 4th, 5th and 6th of July, 1991. It will be the intent of this safety zone to protect marine traffic and spectator craft from the safety hazard associated with a fireworks display in a narrow channel.

**DATES:** Comments must be received on or before April 29, 1991.

**ADDRESSES:** Comments should be mailed to the Captain of the Port Long Island Sound, 120 Woodward Avenue, New Haven, CT 06512. The comments and other material referenced in this notice will be available for inspection and copying at the Captain of the Port office at 120 Woodward Avenue in New Haven. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** The Captain of the Port Duty Watchstander or LT David D. Skewes at (203) 468–4464.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice CGD1 90–191 and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make

oral presentations will aid the rulemaking process.

**Drafting Information:**

The drafters of this regulation are LT David D. Skewes, project officer for Captain of the Port Long Island Sound, and LT Korroch, project attorney, First Coast Guard District Legal Office.

**Discussion of Proposed Regulations**

Due to the safety hazard involved with the detonation of fireworks Special (Class B) explosives in this narrow channel area, the following restrictions would apply.

*Proposed Location*

The proposed safety zone will encompass all waters within a 500 ft square marked by four large orange spheres/market buoys around the fireworks launching platform. The platform will be positioned approximately 500 ft offshore from the Americas Cup Restaurant on the Connecticut River in Middletown, CT. The lauching platform will be anchored on the East side of the channel between Connecticut River Buoys N"92" to the North and N"90" to the South.

*Proposed Effective Dates*

On July 4, 5 and 6, 1991 the main channel of the river in the proposed location will be closed to all marine traffic from 9 p.m., approximately 15 minute prior to the start of the fireworks display, until the completion of each night's display at approximately 9:45 p.m., unless terminated sooner by the Captain of the Port.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

**Economic Assessment and Certification**

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The proposed safety zone is expected to interrupt the flow of marine traffic for no more than 30 minutes during each of the three displays.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

**Proposed Regulations**

In consideration of the foregoing, the Coast Guard proposes to amend part 165 of title 33, Code of Federal Regulations as follows:

1. The Authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Section 33 CFR 165.T01191 is added to read as follows:

**§ 33 CFR 165.T01191 Safety Zone, Connecticut River, Middletown Connecticut.**

(a) *Location.* The following area is a safety zone:

All waters within a 500 ft square area marked by four large orange spheres/marker buoys around the fireworks launching platform positioned approximately 500 ft from the Americas Cup Restuarant on the Connecticut River in Middletown, CT. The launching platform will be anchored on the East side of the channel between Connecticut River Buoys N"92" to the North and N"90" to the South at an approximate position of (41 33.65'N, 072 38.6'W).

(b) *Effective Dates.* This regulation becomes effective on July 4, 5, and 6, 1991 at approximately 9 p.m. local time, approximately 15 minutes prior to the fireworks display. It terminates on July 4, 5, and 6, 1991, at the completion of each night's display at approximately 9:45 p.m. local time.

(c) *Regulations.*

In accordance with the general regulations in 165.23 of this part, entry into these zones is prohibited unless authorized by the Captain of the Port.

Dated: March 4, 1991.

**H. Bruce Dickey,**

*Captain, U.S. Coast Guard, Captain of the Port Long Island Sound.*

[FR Doc. 91–6097 Filed 3–13–91; 8:45 am]

BILLING CODE 4910–14–M

## DEPARTMENT OF DEFENSE

### 48 CFR Parts 225, 231 and 242

### Department of Defense, Federal Acquisition Regulation Supplement; Independent Research and Development Costs

**AGENCY:** Department of Defense (DOD).

**ACTION:** Proposed rule and request for comments.

**SUMMARY:** The Defense Acquisition Regulatory (DAR) Council is proposing changes to the DoD FAR Supplement to amend parts 225, 231, and 242 to implement section 824 of the FY 1991 DoD Authorization Act (Pub. L. 101–510) to incorporate the new, broader legislative standard for IR&D/B&P projects which are of "potential interest to DoD" and to make other related changes. Other requirements of 10 U.S.C. 2372 have been proposed for implementation in the Federal Acquisition Regulation and will be published at a later date.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before April 15, 1991, to be considered in the formulation of the final rule. Please cite DAR Case 90–313 in all correspondence related to this issue.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Eric Mens, Procurement Analyst, DAR Council, OUSD(A)DP(DARS), room 3D139, The Pentagon, Washington, DC 20301–3000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Eric Mens, Procurement Analyst, DAR Council, (703) 697–7266.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Section 824 of the FY 1991 DoD Authorization Act (Pub. L. 101–510) repealed "Section 203 of Pub. L. 91–441 (10 U.S.C. 2358 note)" and amended 10 U.S.C. by adding a new section 2372, "Independent research and development." This proposed rule makes several required changes to the DFARS. Related changes to FAR 31.205–18 and subpart 42.10 are being published at a later date.

DFARS 225.7304(c)(2) is amended to remove an inconsistency that currently exists with 225.7304(c)(3). DFARS 225.7304(c)(3) is amended to incorporate the new 10 U.S.C. 2372 citation and to correct an erroneous reference to IR&D/B&P ceiling limitations or formula constraints as being contained in DFARS part 231, rather than in FAR part 31. DFARS 231.205–18 is rewritten to incorporate the new, broader legislative standard for IR&D/B&P projects which are of "potential interest to DoD," including the specific examples of such projects listed in 10 U.S.C. 2372(c). DFARS 242.1005(a) is added to clarify that the DoD IR&D Technical Evaluation Group is responsible for providing guidance for contractor submission of technical information to support IR&D proposals. DFARS 242.1005(b) is

amended to clarify that the DoD IR&D Technical Evaluation Group is responsible for providing contracting officers with the required technical evaluation, including an opinion concerning the potential interest of the proposed IR&D projects to DoD. DFARS 242.1005(c), 242.1006, and 242.1007 are amended to incorporate the new standard of "potential interest to DoD" and to otherwise satisfy the requirements of 10 U.S.C. 2372. DFARS 242.1008 is amended to reflect current organizations and titles within DoD.

**B. Regulatory Flexibility Act**

An initial Regulatory Flexibility Analysis has not been performed because the proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq* because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the cost principles do not apply. Comments from small entities concerning the affected DFARS Subparts will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 91–610 in all correspondence.

**C. Paperwork Reduction Act**

The proposed rule does not impose any reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Parts 225, 231 and 242**

Government procurement.

**Nancy L. Ladd,**

*Colonel, USAF, Director, Defense Acquisition, Regulatory Council.*

Therefore, it is proposed that 48 CFR parts 225, 231, and 242 be amended as follows:

1. The authority citation for 48 CFR parts 225, 231, and 242 continues to read as follows:

**Authority:** 5 U.S.. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

## PART 225—FOREIGN ACQUISITION

2. Section 225.7304 is amended by revising paragraphs (c) (2) and (3) to read as follows:

**222.7304 Pricing acquisitions for foreign military sales.**

* * * * *

(c) Cost of doing business with a foreign government or an international organization

* * * * *

(2) Costs that are not allowable under FAR part 31 are not allowable in pricing FMS contracts, except as noted in paragraph (c)(3) of this section.

(3) The provisions of 10 U.S.C. 2372 do not apply to contracts for Foreign Military Sales. Therefore, the ceiling limitations or the formula constraints on independent research and development and bid and proposal (IR&D/B&P) costs incorporated in FAR part 31 shall not be applicable to contracts for Foreign Military Sales. IR&D/B&P costs allowed on contracts for Foreign Military Sales shall be limited to their allocable share of the total expenditures. In pricing contracts for Foreign Military Sales, the best estimate of reasonable costs shall be used in forward pricing. Actual expenditures, to the extent that they are reasonable, shall be used in determining final cost.

* * * * *

## PART 232—CONTRACT COST PRINCIPLES AND PROCEDURES

3. Section 231.2095–18 is revised to read as follows:

**231.205–18 Independent research and development and bid and proposal costs.**

(c)(1)(iii)(A)(*1*) Total incurred IR&D/B&P costs, including total IR&D/B&P ceiling amounts which are negotiated pursuant to FAR 31.205–18(c)(1), are fully allocable to all final cost objectives of the contractor. The amount of IR&D/B&P costs allowable under contracts which are subject to advance agreements negotiated by DoD shall not exceed the lesser of:

(*i*) Such contracts' allocable share of incurred IR&D/B&P costs,

(*ii*) Such contracts' allocable share of the total IR&D/B&P ceiling, or

(*iii*) The amount of incurred IR&D/B&P costs for projects having potential interest to DoD.

(*2*)Allowable IR&D/B&P costs are limited to those for projects which are of potential interest to Dod, including activities that:

(*i*) Strengthen the defense industrial and technology base of the United States;

(*ii*) Enhance the industrial competitiveness of the United States;

(*iii*) Promote the development of technologies identified as critical in the plan required under 10 U.S.C. 2508;

(*iv*) Increase the development of technologies useful for both the private commercial sector and the public sector; or

(*v*) Develop efficient and effective technologies for achieving such environmental benefits as improved environmental data gathering, environmental cleanup and restoration, pollution-reduction in manufacturing, environmental conservation, and environmentally safe management of facilities.

(B) The contracting officer will:

(*1*) Determine whether IR&D/B&P activities are of potential interest to DoD, and

(*2*) Provide the results of the determination to the contractor.

(C) See 225.7304 for additional allowability requirements affecting Foreign Military Sales contracts.

## PART 242—CONTRACT ADMINISTRATION

4. Section 242.1005 is revised to read as follows:

**242.1005 Lead negotiating agency responsibilities.**

(a) The DoD IR&D Technical Evaluation Group will provide the necessary guidance for contractor submission of technical information to support IR&D proposals.

(b) The DoD IR&D Technical Evaluation Group will provide the contracting officer with the required technical evaluation, including an opinion concerning the potential interest of the proposed IR&D projects to DoD.

(c) The determination shall address the 231.205–18(c)(1)(iii)(A) requirement that the proposed IR&D/B&P projects must be of potential interest to DoD.

5. Section 242.1006 is revised to read as follows:

**242.1006 Conducting negotiations.**

(a)(5) Ensure that the 231.205–18(c)(1)(iii)(A) requirement that proposed IR&D/B&P projects must be of potential interest to DoD is met.

(b) To implement 10 U.S.C. 2372(c), contracting officers shall encourage contractors to engage in the IR&D/B&P activities cited in 231.205–18(c)(1)(iii)(A).

6. Section 242.1007 is revised to read as follows:

**242.1007 Content of advance agreements.**

(e) The agreement shall specifically note that:

(1) A review of the proposed IR&D/B&P projects for potential interest to DoD was performed and

(2) A determination was made that the Government's allocable share of the negotiated ceiling met the requirement for potential interest to DoD at the time of negotiation.

(f)(2) Allowable IR&D/B&P costs are limited to those incurred for projects that are of potential interest to DoD.

7. Section 242.1008 is revised to read as follows:

**242.1008 Administrative appeals.**

Each Department will establish an appeals hearing group consisting of an acquisition member, who shall be chairman, a technical member, and a legal member. Determinations of the appeals group shall be the final and conclusive determination of the Department of Defense. Members shall be appointed as follows:

(S–70)(1) *For the Army.* The Deputy Assistant Secretary (Procurement) will appoint the acquisition member. The Deputy Assistant Secretary (Research and Technology) will appoint the technical member. The Deputy General Counsel (Acquisition) will appoint the legal member.

(2) *For the Navy.* The Principal Assistant Secretary (Research Development and Acquisition) will appoint the acquisition member and the technical member. The Deputy General Counsel (Logistics) will appoint the legal member.

(3) *For the Air Force.* The Deputy Assistant Secretary (Acquisition) will appoint the acquisition member and the technical member. The Assistant General Counsel (Procurement) will appoint the legal member.

(4) *For the Defense Logistics Agency (DLA).* The Director, DLA (or the Deputy Director, DLA) will appoint the acquisition member, the technical member, and the legal member.

[FR Doc. 91–5975 Filed 3–13–91; 8:45 am]
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# Notices

Federal Register
Vol. 56, No. 50
Thursday, March 14, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Columbia River Basin Anadromous Fish Management; Idaho, Oregon, Washington

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of availability of management guidelines.

**SUMMARY:** The Northern, Intermountain, and Pacific Northwest Regions have jointly developed management guidelines that provide for consistency among the Regions and Forests and will lead to more coordinated management of anadromous fish resources among all fish and land management agencies. The Notice of availability of management guidelines and request for comments was published in the **Federal Register** on August 10, 1990. The three Regions received comments from 17 respondents and their comments were considered in the preparation of the management guidelines. The management policy will be issued as Regional Supplements to Forest Service Manual FSM 2636, Wildlife, Fish, and Sensitive Plant Habitat Management. The management guidelines will be issued as Regional Supplements to Forest Service Handbook, FSH 2609.24, Wildlife and Fisheries Habitat Management Handbook. By agreement with the other two Regions, the Northern Region is publishing this notice of availability.

**DATES:** The management guidelines were adopted by the three regions on January 25, 1991.

**ADDRESSES:** To obtain copies of the Columbia River Basin Anadromous Fish Habitat Management Guidelines, written request should be sent to: Gordon Haugen, Columbia Basin Fish & Wildlife Coordinator, Multinomah Bldg., P.O. Box 3623, Portland, OR 97208.

**FOR FURTHER INFORMATION CONTACT:** Gordon Haugen at the above address or phone (503) 326–4929.

**SUPPLEMENTARY INFORMATION:** The Columbia River flows through the states of Washington, Oregon and Idaho, through three Forest Service regions, and through 16 national forests. The Forest Service manages a third of the land in the Columbia River Basin, including about 15,000 miles of anadromous fish habitat which is more than 50% of the remaining suitable habitat in the basin. Because of this, management of anadromous fish habitat has always been an important activity the Forest Service has included in it's multi-resource program. Habitat management has been addressed in Forest Plans and will continue to be addressed during implementation of these Plans within the context of multiple-use goals and objectives. The significance of this resource, internal reviews, and forest plan appeals indicated a need to look closely at management direction in the areas of setting objectives and assessing management effects as related to the planning of other agencies in the Columbia River Basin.

The Forest Service has adopted this policy and management guidelines recognizing they have a vital role in the restoration of wild and naturally reproducing stocks of anadromous fish in the Columbia River Basin. The three Regions intend to support and participate in the achievement of basin wide anadromous fish restoration goals and will adopt consistent approaches to management the anadromous fish habitat on National Forest lands throughout the Columbia River Basin.

The mechanism to achieve this consistency is through common management guidelines issued as a supplement to the Wildlife and Fisheries Habitat Management Handbook, FSH 2609.24. Briefly, the handbook will provide guidance for Forest Service employees on how to:

1. Establish anadromous fish production capability objectives.
2. Explicitly describe the physical and biological characteristics of riparian and aquatic ecosystems (i.e. "Desired future conditions") necessary to meet those production capability objectives.
3. Identify habitat inventory needs and procedures.
4. Develop and implement a monitoring strategy for anadromous fish habitats.
5. Define and implement cumulative effects assessment procedures.
6. Identify and address information and research needs.
7. Implement the management guidelines relative to forest land management plans.
8. Develop or revise MOU's with anadromous fish/habitat management entities.
9. Coordinate with related anadromous fish/habitat management programs/activities.
10. Establish an oversight group to facilitate technical development and implementation of the management guidelines.

The management guidelines are intended to be dynamic and will be reviewed annually and amended as necessary.

Dated: March 6, 1991.

**John M. Hughes,**

*Deputy Regional Forester.*

[FR Doc. 91–6086 Filed 3–13–91; 8:45 am]

BILLING CODE 3410–11–M

### Environmental Impact Statement for the Development of the Management Plan for Grand Island National Recreation Area, Hiawatha National Forest, MI

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement (EIS).

**SUMMARY:** The Department of Agriculture, Forest Service will prepare an Environmental Impact Statement (EIS) for the development of the management plan for Grand Island National Recreation Area (GINRA), Munising Ranger District, Hiawatha National Forest, Alger County, Michigan. The Forest Service invites written comments and suggestions on the scope of the analysis.

The Forest Service gives notice that a full environmental analysis and decision making process will occur on the proposal so that interested persons are aware of how they may participate and contribute to the final decision.

The agency will initially accept written comments and suggestions as well as hold public meetings on the scope of the analysis. Since the agency

has received voluminous public comments relating to the possible management of GINRA, it urges that additional comments focus on specific issues. Those earlier comments will be considered during the preparation of the DEIS. General notice to the public concerning the scope of the analysis will be provided by a newsletter called Full Circle and/or news releases.

There will also be a period provided for written comments and public meetings on the content of the Draft Environmental Impact Statement (DEIS) once it is issued. That period will extend for 45 days from the date the Environmental Protection Agency's notice of availability of the DEIS appears in the **Federal Register**. It will be critical that those persons interested in the management of the Hiawatha National Forest participate during the comment period for the DEIS. Comments on the DEIS should be specific, and may address the adequacy of the DEIS or the merits of the alternatives discussed {see the Council on Environmental Quality (CEQ) Regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA) at 40 CFR 1503.3. After the comment period ends on the DEIS, the comments will be analyzed and considered by the agency in preparing the Final Environmental Impact Statement (FEIS).

**DATES:** Comments related to the scope of the analysis should be mailed to the agency by May 3, 1991, to ensure timely consideration. Public meetings on the scope of the analysis will be held during April 1991 with the dates, times, and locations to be announced through news releases and direct mailings of Full Circle.

**ADDRESSES:** Mail comments to District Ranger, Munising Ranger District, Hiawatha National Forest, 400 E Munising Ave., Munising, MI 49862.

**FOR FURTHER INFORMATION CONTACT:** Direct questions about the proposed action and the DEIS to: Paul Pedersen, Project Team Leader, Munising Ranger District, 400 E. Munising Ave., Munising, MI 49862, (phone 906–387–2512).

**SUPPLEMENTARY INFORMATION:** The GINRA, located on the Munising District of the Hiawatha National Forest, was created as a result of Congressional legislation in May, 1990. The island of 12,900 acres was acquired from the Trust for Public Lands. Previous to that, the island was owned by Cliffs Forest Products Company for almost 90 years. The island was used primarily for recreation and since the 1950's was heavily logged. There are 18 cabins on the island. Fifteen landowners own one parcel of about 45+ acreas. The remainder of the island is in Federal ownership. The legislation directs the Forest Service to develop a long-range management plan for the island and authorizes the Forest Service to administer the island under the objectives of that plan.

Preliminary information indicates there are several significant issues such as:

- The legislation requires that a feasibility study be completed to analyze the opportunity to develop up to 55 acreas in a commercial lodge development. Where this facility can be located may be retricted by the availability of water, sewage treatment facilities, wetlands and mitigation of cultural resources.
- Acquisition of lots in the 45-acre private ownership has to be clarified. Criteria have to be set up to determine under what circumstances the Forest Service would want to acquire land. In all cases it would be only if there is a willing seller.
- Motorized versus non motorized use of the island will need to be resolved. The legislation requires that opportunities for snowmobiles be provided. Vehicle uses by the permittees and landowners needs to be clarified. The legislation allows for traditional access to the island.
- A range of recreation opportunities needs to be provided. This could, for example, vary from developed campgrounds to dispersed campsites along the trails; motorized trails to hiking trails; public transportation to rentals of mountain bikes; from a lodge to a marina, etc.

Possible alternatives in response to these issues include:

- Alternative 1. A no-action alternative which will continue current operations at Grand Island National Recreation Area with no expansion of services or facilities.
- Alterntaive 2. An alternative which provides for little convenience or comforts, with no motorized use or commercial development.
- Alternative 3. An alternative which provides for motorized use and commercial development.
- Alternative 4. An alternative that provides for a mix of Alternatives 2 and 3.
- Alternative 5. Other alternative(s) that may be developed as a result of the scoping process.

A preferred alternative will be identified in the DEIS.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in November 1991. At that time, EPA will publish a notice of availability of the DEIS in the **Federal Register**; notices will be published in local newspapers; and the Forest Service will mail copies of the DEIS or summary of the DEIS to all who have notified me of their interest in the management plan.

The FEIS is scheduled to be completed and available to the public approximately 6 months following the close of the review period for the DEIS. The responsible Forest Service official will document the decision and the reasons supporting it in a Record of Decision. That decision will be subject to appeal pursuant to 36 CFR 217.

The Forest Service official responsible for approving the proposed action is: William F. Spinner, Forest Supervisor, Hiawatha National Forest, 2727 No Lincoln Rd., Escanaba, MI 49829.

Dated: March 4, 1991.

**William F. Spinner,**

*Forest Supervisor.*

[FR Doc. 91–6084 Filed 3–13–91; 8:45 am]

BILLING CODE 3410–11–M

## Duncan/Sunflower Timber Sale, Draft Environmental Impact Statement, Foresthill Ranger District, Tahoe National Forest, Placer County, CA

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice to extend comment period for the draft environmental impact statement.

**SUMMARY:** The comment period for the draft EIS for the Duncan/Sunflower Timber Sale is hereby extended 30 days to April 10, 1991. The original comment period closes March 11, 1991, as noticed by the Environmental Protection Agency in the **Federal Register**, Vol. 56, No. 17, Friday, January 25, 1991 (56 FR 2924).

**DATES:** Written substantive comments need to be received by April 10, 1991 to be considered.

**ADDRESSES:** Submit comments to John H. Skinner, Forest Supervisor, Tahoe National Forest, Highway 49 and Coyote Street, Nevada City, CA 95959.

**FOR FURTHER INFORMATION CONTACT:** Philip G. Tuma, Timber Management Planner, Foresthill Ranger District, Tahoe National Forest, 22803 Foresthill Road, Foresthill, CA 95631, (916) 367–2224.

**SUPPLEMENTARY INFORMATION:** Because of the complexity of the issues affecting the Duncan and Sunflower Timber Sale Draft Environmental Impact Statement, and the request of several parties including federal and local agencies for an extension of time to provide substantive comment, the close of the

comment period is extended 30 days from March 11, 1991 to April 10, 1991.

Dated: March 6, 1991.

**John H. Skinner,**

*Forest Supervisor.*

[FR Doc. 91-6085 Filed 3-13-91; 8:45 am]

BILLING CODE 3410-11-M

## Grouse Meadows Timber Sale, Wenatchee National Forest, Yakima County, Washington

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Forest Service, USDA, will prepare an environmental impact statement (EIS) to analyze and disclose the environmental impacts of a site specific proposal to harvest and regenerate timber, and construct associated roads on the Grouse Meadows timber sale. The proposed projects will be in compliance with the March 1990, Wenatchee Forest Land and Resource Management Plan (Forest Plan) which provides the overall guidance for management of the area including a schedule of proposed activities for the next ten years. The proposed projects lie within the Short and Dirty Creek drainage, between Divide Ridge and the South Fork of the Tieton River on the Naches Ranger District. This planning area is part of the Blue Slide roadless area described in appendix C of the Forest Plan Environmental Impact Statement. Implementation of the proposed project will begin in fiscal year 1991.

The Wenatchee National Forest invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the environmental analysis and decision making process occurring on this proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

**DATES:** Comments concerning the management of this project area should be received by April 12, 1991.

**ADDRESSES:** Submit written comments and suggestions concerning the management of this area within the scope of this analysis to Don Rotell, District Ranger, Naches Ranger District, 10061 Highway 12, Naches, Washington, 98937.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed project work and EIS should be directed to Keith Hole, Timber Management Assistant, Naches Ranger District, 10061 Highway 12, Naches, Washington, 98937; telephone (509) 653-2205.

**SUPPLEMENTARY INFORMATION:** The Forest Service site specific proposal includes harvesting 3.6MMBF of timber (net green) from 225 acres of land and constructing 5.5 miles of road on the Grouse Meadows timber sale. The planning area being analyzed for the project is approximately 3,200 acres. The proposed and other associated projects, including site preparation, tree planting, and precommercial thinning will be evaluated in a draft EIS.

Tentative issues that have been identified include: (1) Timber harvest and road construction in the Blue Slide roadless area, (2) effects of timber harvest and road construction on big game, and (3) effects of timber harvest and road construction on Off Road Vehicle (ORV) trails.

A range of project alternatives will be considered including a No Action alternative. The issues gathered through scoping will be used to formulate action alternatives. The action alternatives will vary in (1) amount and location of acres considered for treatment, (2) the amount of roads constructed for access, (3) the silvicultural and post-harvest treatments prescribed, and (4) the number, type, and location of other integrated resource projects.

The proposal addressed through the Draft EIS will tier to the Forest Plan. The Forest Plan provides the overall guidance (Goals, Objectives, Standards and Guidelines, and Management Area direction) in achieving the desired future condition for this area.

Approximately 25 percent of the potentially affected area lies in a Habitat Conservation Area (HCA). No harvest will be considered within that HCA. Of the remaining area, about 40 percent is classified as General Forest (GF), 40 percent is classified as Scenic Travel II (ST-2) and 20 percent is in Nonroaded Motorized 4 × 4 (RE 2b.)

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from other Federal, State, tribal and local agencies, potential purchasers and other individuals or organizations who may be interested in or affected by the proposed actions. This information will be used in preparation of the draft EIS. Scoping and analysis for this project will begin in March, 1991. The scoping process includes:

1. Identifying potential issues.

2. Identifying issues to be analyzed in depth.

3. Eliminating insignificant issues, issues covered by previous environmental review, and issues not within the scope of this decision.

4. Exploring additional alternatives.

5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions.)

6. Determining potential cooperating agencies and task assignments.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June, 1991. At that time the EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v *Hodel*, 803 f. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy

Act at 40 CFR 1503.3 in addressing these points).

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by September, 1991. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. Don Rotell, Naches District Ranger, Wenatchee National Forest is the responsible official. As the resposible official he will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulation (36 CFR 217).

Dated: February 26, 1991.

**Donald F. Rotell,**

*Naches District Ranger.*

[FR Doc. 91-6026 Filed 3-13-91; 8:45 am]

BILLING CODE 3410-11-M

## COMMISSION ON CIVIL RIGHTS

### Washington Advisory Committee to the Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Washington Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 3 p.m. on April 18, 1991, at the Radisson Hotel Airport, 17001 Pacific Highway South, Seattle, Washington 98188. The purpose of the meeting is to review current civil rights developments in the State, and plan future program activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Sharon Bumala or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office in at least five (5) working days before the schedule date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 7, 1991.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 91-6087 Filed 3-13-91; 8:45 am]

BILLING CODE 6335-01-M

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zone 72—Indianapolis, IN, Application for Subzone Toyota Industrial Equipment Manufacturing Plant, Columbus, IN; Further Extension of Comment Period

The comment period for the above case, involving a proposed special-purpose subzone for the forklift truck manufacturing plant of Toyota Industrial Equipment Manufacturing, Inc. (55 FR 49662, 11/30/90), is further extended to March 20, 1991, based on a request from an interested party for additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions shall include 5 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 4213, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: March 8, 1991

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 91-6107 Filed 3-13-91; 8:45 am]

BILLING CODE 3510-DS-M

## International Trade Administration

**[A-412-602]**

### Amendment to Final Results of Antidumping Duty Administrative Review; Certain Forged Steel Crankshafts from the United Kingdom

**AGENCY:** International Trade Administration, Import Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** We are amending the final results of the administrative review of the antidumping duty order on certain forged steel crankshafts from the United Kingdom (56 FR 5975, February 14, 1991) based on a clerical error in the calculations. The correct cash deposit rate for United Engineering and Forging (UEF) and any new exporters whose first shipment occurred after August 31, 1989, is 9.77 percent.

**EFFECTIVE DATE:** March 14, 1991.

**FOR FURTHER INFORMATION CONTACT:** James Terpstra or Brad Hess, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3965 or (202) 377-3773, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

After publication of our final results, UEF alleged that, for a small number of U.S. sales, the Department had made ministerial errors by basing the determination of contemporaneity on erroneous dates of sale rather than corrected dates. We agree with UEF.

After correcting the calculation to ensure that all U.S. sales were matched to contemporaneous home market sales, the final results changed from the 9.88 percent published in the original final results to 9.77 percent.

Accordingly, pursuant to section 751(f) of the Tarrif Act of 1930, as amended, we are correcting the ministerial errors in the final results of this administrative review. The cash deposit rate for UEF and any new exporters not covered in this administrative review whose first shipments occured after August 31, 1989, and who are unreleated to UEF is now 9.77 percent.

This notice is published pursuant to 19 CFR 353.28.

Dated: March 7, 1991.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 91-6108 Filed 3-13-91; 8:45 am]

BILLING CODE 3510-DS-M

## National Oceanic and Atmospheric Administration

### Public Hearing on the Final Environmental Impact Statement and Final Management Plan for the Proposed Chesapeake Bay National Estuarine Research Reserve in Virginia

**AGENCY:** Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

**ACTION:** Public meeting notice.

**SUMMARY:** Notice is hereby given that the Sanctuaries and Reserves Division, of the Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, will hold a public hearing for the purpose of receiving comments on the Final

Environmental Impact Statement and Final Management Plan (FEIS/FMP) prepared on the proposed designation of Goodwin Islands, Catlett Islands, Taskinas Creek, and Sweet Hall Marsh as the components of the Chesapeake Bay National Estuarine Research Reserve in Virginia.

The Office of Ocean and Coastal Resource Management will hold the public hearing at the following time and place:

Wednesday, April 10, 1991 at 7 p.m.—Watermen's Hall, Virginia Institute of Marine Science, College of William and Mary, Route 1208, Gloucester Point, VA.

The views of interested persons and organizations on the adequacy of the FEIS/FMP are solicited, and may be expressed orally and/or in written statements. Presentations will be scheduled on a first-come, first-heard basis, and may be limited to a maximum of five (5) minutes. The time allotment may be extended before the hearing when the number of speakers can be determined.

**FOR FURTHER INFORMATION CONTACT:** Patmarie S. Maher, (202) 673–5122, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW., suite 714, Washington, DC 20235. Copies of the Final Environmental Impact Statement/Final Management Plan are available upon request to the Sanctuaries and Reserves Division.

The comment period for the FEIS/FMP will end on Monday, April 15, 1991.

(Federal Domestic Assistance Catalog Number 11.420 Coastal Zone Management Estuarine Sanctuaries)

Dated: March 8, 1991.

**John J. Carey,**

*Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.*

[FR Doc. 91–6046 Filed 3–13–91; 8:45 am]

BILLING CODE 3510–08–M

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## Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council will hold a public meeting of its Groundfish Management Team (GMT), on March 25–27, 1991, at the Metro Center, 2000 SW. First Avenue, room 335, Portland, OR. The GMT will begin its meeting on March 25 at 1 p.m. The meeting, which is open to the public, will adjourn on March 27 at 12 noon.

The GMT will discuss a change in California State gillnet regulations, development of a comprehensive observer program for the entire groundfish fleet, a proposed change in the minimum trawl net mesh size, and catch projections for several important groundfish species. The GMT will also prepare recommendations to the Council on these and other issues pertaining to management of the West Coast groundfish fisheries.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: March 8, 1991.

**David S. Crestin,**

*Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 91–6022 Filed 3–13–91; 8:45 am]

BILLING CODE 3510–22–M

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## National Marine Fisheries Service

## Marine Mammals; Application for Permit; National Marine Mammal Laboratory (P77#49)

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. *Applicant:* Dr. Howard Braham, Director, National Marine Mammal Laboratory, National Marine Fisheries Service, 7600 Sand Point Way, NE, BIN C15700, Seattle, Washington 98115.

2. *Type of Permit:* Scientific Research.

3. *Name and Number of Marine Mammals:* 60 California sea lions (*Zalophus californianus*).

4. *Type of Take:* The applicant proposes to capture, restrain, sample, mark/tag and release 10 females giving birth to full-term pups and 20 females giving birth to premature pups. Ten (10) full-term pups and 20 premature pups, of the females listed above, will be captured, sacrificed and sampled. Included in the 20 premature pups taken will be pups which die within a few hours of birth, but should any premature pups be alive at the time of collection they will be sacrificed. The research is designed to determine whether pesticide levels (DDT and PCB's) are responsible for premature births in sea lions by sampling dead, prematurely born pups and live healthy pups.

5. *Location and Duration of Activity:* The taking will be conducted late in the premature pupping season (April 20 to May 20) and during the pupping season (May 20 to June 20, 1991) on San Miguel Island, California.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7234, Silver Spring, Maryland 20910, within 30 days of the publication of his notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

By appointment: Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, Maryland 20910 (301–427–2289);

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415 (213–514–6196).

Dated: March 5, 1991.

**Nancy Foster,**

*Director, Office of Protected Resources.*

[FR Doc. 91–6020 Filed 3–13–91; 8:45 am]

BILLING CODE 3510–22–M

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## National Oceanic and Atmospheric Administration

## Marine Mammals; Application for Permit; Sea World, Inc. (P2V)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. *Applicant:* Sea World, Inc., 7007 Sea World Drive, Orlando, Florida 32821.

2. *Type of Permit:* Public display.

3. *Name and Number of Animals:* Killer whale (*Orcinus orca*)—1.

4. *Requested Activity:* Import from Windsor Safari Park Windsor, England.

5. *Duration of Activity:* The animal will be imported within one year after issuance of a permit.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written date or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Silver Spring, Maryland, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910 (301/427–2289);

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281–9200);

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813/893–3141); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731.

Dated: March 5, 1991.

**Nancy Foster,**

*Director, Office of Protected Resources.*

[FR Doc. 91–6021 Filed 3–13–91; 8:45 am]

BILLING CODE 3510–22–M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Air University Board of Visitors

The Air University Board of Visitors will hold an open meeting on 21–24 April 1991 beginning at 0830 in the Air University Conference Room, Air University Headquarters, Maxwell Air Force Base, Alabama (10 seats available).

The purpose of the meeting is to give the board an opportunity to review Air University educational programs and to present to the Commander, Air University, a report of their findings and recommendations concerning these programs.

For further information on this meeting, contact Dr. Dorothy D. Reed, Coordinator, Air University Board of Visitors, Headquarters, Air University, Maxwell Air Force Base, Alabama 36112–5001, telephone (205) 953–5159.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 91–6089 Filed 3–13–91; 8:45 am]

BILLING CODE 3910–01–M

## DELAWARE RIVER BASIN COMMISSION

### Revised Proposed Amendment of Project Review Filing Fee Schedule

**AGENCY:** Delaware River Basin Commission.

**ACTION:** Notice of proposed rulemaking and public hearing.

**SUMMARY:** Notice is hereby given that the Delaware River Basin Commission will hold a public hearing in accordance with this notice to receive comments on revised proposed amendments to its schedule of project review filing fees for review of water resources projects.

**DATES:** The public hearing will be held on April 24, 1991, at 1 p.m.

**ADDRESSES:** The hearing will be held in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey. Written comments should be submitted to Susan M. Weisman, Commission Secretary, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

**FOR FURTHER INFORMATION CONTACT:** Susan M. Weisman, Comission Secretary, Delaware River Basin Commission, Telephone (609) 883–9500.

**SUPPLEMENTARY INFORMATION:** On June 28, 1972, the Commission adopted a regulation requiring that a filing fee be paid to the Commission at the time of filing applications pursuant to § 3.8 of the Delaware River Basin Compact. Staff time and other costs incurred by the Commission in reviewing water resources projects proposed by other public agencies, private entities and individuals had become substantial and it was deemed timely and in the public interest to initiate a program of allocating a portion of the project review costs to the applicant or project sponsor. On April 23, 1975, the Commission amended the filing fee regulation by increasing the level of filing fees in recognition of the fact that revenues obtained from the filing fees since 1972 amounted to considerably less than the cost of administering the Commission's project review program. Although the levels were increased, government agencies continued to be exempt from such filing fees.

As noticed in the October 15, 1990 and December 5, 1990 issues of the **Federal Register**, the Commission proposed new amendments to its schedule of project review filing fees to make the project review program more self-sustaining. Those amendments would have: required filing fees for project review pursuant to § 3.8 and Article 10 of the Delaware River Basin Compact; discontinued the exemption of government agencies from such filing fees; and increased the minimum fee to $1,000 for any project requiring Commission action. In addition, each substantial project modification following Commission action would have required an additional filing fee. At its December 12, 1990 public hearing on these proposed amendments and during the course of the hearing comment period which extended through January 2, 1991, the Commission received and considered testimony from water users and other interested parties and is now revising its proposal in response to the testimony.

At this time, the Commission is revising the recent proposal as follows: government agencies would continue to be exempt from such filing fees; the minimum fee would be $250 for any project requiring Commission action; and fees for projects that would result in an out-of-basin diversion would increase by 50%. All other aspects of the project review filing fee proposal which was the subject of the Commission's December 12, 1990 public hearing would remain as originally proposed with the exception of the effective date, which is now proposed as May 1, 1991.

The subject of the hearing will be as follows:

**Amendment of Project Review Filing Fee Schedule**

The proposed amendment would read as follows:

1. A filing fee shall be paid to the Commission, according to the schedule herein, at the time of filing each application for project review, pursuant to § 3.8 and article 10 of the Delaware River Basin Compact. Government

agencies shall be exempt from such filing fees.

2. The project review filing fee is the greater of (a) or (b) as follows, and (c), if and as applicable:

(a) *Minimum fee:* $250 for any project that requires Commission action;

(b) *Alternative fee:*

(1) 1/10 of 1% of project cost to $10,000,000;

(2) 1/25 of 1% of remaining cost above $10,000,000 but not to exceed a maximum fee of $50,000 as to any one project.

(c) For any project that results in an out-of-basin diversion, the fee as described above is increased by 50%.

3. The project cost shall include the estimated costs of design, supervision of construction, legal services, contract administration, land, materials, equipment, construction and fabrication.

4. Revenues received pursuant to this regulation shall go into the Commission's general fund and be subject to specific appropriation by the Commission.

5. Each substantial project revision or modification following Commission action requires an additional fee.

6. These amendments become effective May 1, 1991.

Authority: Delaware River Basin Compact, 75 Stat. 688.

Dated: March 7, 1991.

**Susan M. Weisman,**

*Secretary.*

[FR Doc. 91-6088 Filed 3-13-91; 8:45 am]

BILLING CODE 6360-01-M

## DEPARTMENT OF EDUCATION

### Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** Interested persons are invited to submit comments on or before April 15, 1991.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** Mary P. Liggett (202) 708-5174.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: March 8, 1991.

**Mary P. Liggett,**

*Acting Director, Office of Information Resources Management.*

**Office of Elementary and Secondary Education**

*Type of Review:* New.
*Title:* Children of Alcoholics Survey.
*Frequency:* On occasion.
*Affected Public:* Individuals or households.

*Reporting Burden*

*Responses:* 100.
*Burden Hours:* 16.

*Recordkeeping Burden*

*Recordkeepers: 0*
*Burden Hours: 0.*

*Abstract:* This survey will be given to school teachers who have reviewed the Children of Alcoholics Handbook. The Department will use this information to improve the effectiveness of the handbook.

**Office of Postsecondary Education**

*Type of Review:* New.
*Title:* Report of Financial Need and Certification for the Jabob K. Javits Fellows Program.
*Frequency:* Annually.
*Affected Public:* Individuals or households; non-profit institutions.

*Reporting Burden*

*Responses:* 100.
*Burden Hours:* 500.

*Recordkeeping Burden*

*Recordkeepers:* 100.
*Burden Hours:* 500.

*Abstract:* This report will collect information from institutions of higher education regarding graduate participants of the Jacob K. Javits Fellows Program. The Department uses this data to monitor grantee's performance and to close out grants.

[FR Doc. 91-5986 Filed 3-13-91; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. ER91-287-000, et al.]**

### Pacific Electric Operations, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

March 7, 1991.

Take notice that the following filings have been made with the Commission:

**1. PacifiCorp Electric Operations**

[Docket No. ER91-287-000]

Take notice that PacifiCorp Electric Operations ("PacifiCorp"), on March 1, 1991, tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, Fourth Revised Sheet No. 5D superseding Third Revised Sheet No. 5D (Index of Purchasers Executing Service Agreements) under PacifiCorp's FERC Electric Tariff, Original Volume No. 3 (Tariff), and a Service Agreement between PacifiCorp and Imperial Irrigation District (Imperial) dated January 8, 1991 under Service Schedule PPL-3 of the Tariff.

The Service Agreement, provides for the sale of non-firm power and energy for resale in accordance with Service Schedule PPL-3 of the Tariff. PacifiCorp's filing herein is provided to add Imperial to the Index of Purchasers Executing Service Agreements under the Tariff.

PacifiCorp requests, pursuant to 18 CFR 35.11 of the Commission's Rules

and Regulations, that a waiver of prior notice be granted and that an effective date of January 1, 1991 be assigned to the Service Agreement. This date is consistent with the effective date shown on the Service Agreement.

Copies of this filing were supplied to Imperial Irrigation District, the Public Utility Commission of Oregon and the Public Utilities Commission of the State of California.

*Comment date:* March 21, 1991, in accordance with Standard Paragraph E end of this notice.

**2. Consumers Power Co., The Detroit Edison Co. and The Toledo Edison Co.**

[Docket No. ER91-291-000]

Take notice that Consumers Power Company, The Detroit Edison Company and The Toledo Edison Company (sometimes collectively referred to as the "Parties") on March 4, 1991 filed Amendment No. 9 to the "Operating Agreement Among Consumers Power Company, The Detroit Edison Company and The Toledo Edison Company". Amendment No. 9 revises the rates in the Emergency Services, Interchange Power and Short Term Power Schedules to reflect updated cost justification data.

In addition, Amendment No. 9 cancels three out-of-date services, i.e., the Coordinating of Scheduled Maintenance of Generating Facilities, Off Peak Power and Transmission Service for Ontario Hydro Keith Power.

Copies of the filing were served upon the Ohio Public Utilities Commission and the Michigan Public Service Commission.

*Comment date:* March 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

**3. Florida Power & Light Co.**

[Docket No. ER91-285-000]

Take notice that Florida Power & Light Company (FPL) on February 28, 1991, tendered for filing a document entitled Amendment Number Two to St. Lucie Nuclear Reliability Exchange Agreement Between Florida Power & Light Company and the Florida Municipal Power Agency (Amendment Number Two).

FPL states that the Amendment Number Two, FPL and the Florida Municipal Power Agency (FMPA) have agreed to revise the methodology used to determine the cost of energy associated with exchange capacity which is exchanged between FPL and FMPA. FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Amendment be made effective March 1, 1991. FPL states that a copy of the filing was served on FMPA.

*Comment date:* March 21, 1991, in accordance with Standard Paragraph E end of this notice.

**4. Northern States Power Co.**

[Docket No. ER90-231-000]

Take notice that on February 28, 1991, Northern States Power Company (NSP) tendered for filing, the following supplement to its Rate Schedule FERC No. 419:

Supplement No. 3

NSP states that such supplement is and the "Assignment of Contracts and Warranties" between United Minnesota Power Agency, (UMMPA) and the Southern Minnesota Municipal Power Agency (SMMPA). NSP states that it apparently neglected to previously file the agreement for acceptance for filing as Supplement 3 to Rate Schedule FERC No. 419. The Amendment proposes to amend the Application filed in this docket on January 24, 1991 regarding Rate Schedule FERC No. 415. NSP is no longer requesting Commission approval of the UMMPA Outlet Agreement because it was previously approved as Rate Schedule FERC No. 419 by letter order dated March 11, 1983.

NSP states that the Assignment Agreement supplements the "Sherco 3 Outlet Transmission Agreement between Northern States Power Company and Southern Minnesota Municipal Power Agency" and the "Shared Transmission Agreement between Northern States Power Company and Southern Minnesota Municipal Power Agency," and other agreements previously approved as Rate Schedule FERC No. 415 and supplements by the Commission in Docket Nos. ER82-550-000, *et al.* Under the Assignment, UMMPA assigned certain transmission rights and obligations for use of NSP's transmission system to SMMPA. NSP further requests that Rate Schedule FERC No. 419 now be transferred as additional supplements to Rate Schedule FERC No. 415.

*Comment date:* March 21, 1991 in accordance with Standard Paragraph E at the end of this notice.

**5. Century Power Corp.**

[Docket No. ER91-282-000]

Take notice that on February 27, 1991, Century Power Corporation ("Century") tendered for filing a January 21, 1991 letter agreement amending its 1990-1992 Power Sales Agreement with Nevada Power Company ("Nevada"). The letter agreement eliminates a variable energy charge feature in the Power Sales Agreement and substitutes, instead, fixed energy charges for the balance of 1991 and 1992.

Century asks that the filing become effective as anticipated in the parties' letter agreement on February 1, 1991. Accordingly, waiver of notice is requested.

*Comment date:* March 21, 1991 in accordance with Standard Paragraph E at the end of this notice.

**6. Central Vermont Public Service Corp.**

[Docket No. ER-91-283-000]

Take notice that on February 27, 1991, Central Vermont Public Service Corporation ("CVPS") tendered for filing as an initial rate schedule a Purchase Agreement ("The Agreement") between UNITIL Power Corp. ("UNITIL Power") and CVPS. The Agreement, dated as of July 30, 1990, provides for the sale of a 10 MW entitlement of the Vermont Yankee nuclear power plant by CVPS to UNITIL for the period May 1, 1991 to October 31, 1991, and further provides for the sale by CVPS to UNITIL of 4.8077% (normally 25 MW) of the Vermont Yankee nuclear power plant for the period November 1, 1991 to October 31, 1998. The contract further provides for a sale by UNITIL to CVPS of 10 MW of the New Haven Harbor Station for May 1, 1991 to October 31, 1991.

CVPS states that copies of the filing were served upon the respective jurisdictional state regulatory agencies of the parties hereto. CVPS further states that the filing is in accordance with section 35 of the Commission's regulations.

*Comment date:* March 21, 1991 in accordance with Standard Paragraph E at the end of this notice.

**7. Ocean State Power**

[Docket No. ER91-284-000]

Take notice that Ocean State Power (Ocean State), on February 28, 1991, tendered for filing the following supplements (the "Supplements") to its rate schedule with the Federal Energy Regulatory Commission (the "Commission"):

Supplement No. 12 to Rate Schedule FERC No. 1
Supplement No. 9 to Rate Schedule FERC No. 2
Supplement No. 8 to Rate Schedule FERC No. 3
Supplement No. 9 to Rate Schedule FERC No. 4

The Supplements to the rate schedules request approval of Ocean State's proposed rate of return on equity for the period beginning with the requested effective date of the Supplements, April 29, 1991, to the effective date of Ocean

State's updated rate of return on equity to be filed in February, 1992. The Supplements are being filed pursuant to § 7.5 of each of Ocean State's unit power agreements (the "Agreements") between Ocean State and Boston Edison Company, New England Power Company, Montaup Electric Company, and Newport Electric Corporation, respectively and the Commission's orders in *Ocean State Power*, 38 FERC ¶ 61,140 at 61,380 (1987) and 44 FERC ¶ 61,985 (1988). The Amendments do not constitute a rate increase.

Ocean State Power has requested that the Supplements be permitted to become effective sixty days from the date of filing.

Copies of the filing have been served upon Boston Edison Company, New England Power Company, Montaup Electric Company, Newport Electric Corporation, the Massachusetts Department of Public Utilities, the Rhode Island Public Utilities Commission and TransCanada PipeLines Limited.

*Comment date:* March 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

**8. Canal Electric Co.**

[Docket No. ER91-217-000]

Take notice that on February 28, 1991, Canal Electric Company (Canal) submitted additional information in support of the Participation Agreement among itself, Cambridge Electric Light Company (Cambridge) and Commonwealth Electric Company (Commonwealth) that Canal filed on January 15, 1991. The Participation Agreement governs the rights and obligations of the parties with respect to Phase II of the New England/Hydro-Quebec Interconnection (the Project). The additional information filed by Canal indicates that, when the capacity benefits provided by the Project are not considered, the Participation Agreement results in an increase in the wholesale charges to Cambridge and Commonwealth during the first year of the Project's operation of approximately $3.2 million. Canal has requested that the Commission waive its notice requirements pursuant to § 35.11 of the Commission's regulations in order to allow the Participation Agreement to become effective as of November 1, 1990 and, to the extent necessary, to allow the recovery, commencing on that date, of certain costs incurred previously by Canal in connection with the Project.

*Comment date:* March 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs:**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91-5999 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. CP91-1379-000, et al.]**

## Kern River Gas Transmission Co., et al.; Natural Gas Certificate Filings

March 7, 1991.

Take notice that the following filings have been made with the Commission:

**1. Kern River Gas Transmission Co.**

[Docket No. CP91-1379-000]

Take notice that on February 27, 1991, Kern River Gas Transmission Company (Kern River), P.O. Box 2511, Houston, Texas, 77252-2511, pursuant to sections 7(b) and 7(c) of the Natural Gas Act, as amended, and subpart E of part 157 of the Regulations of the Federal Energy Regulatory Commission (Commission), filed in Docket No. CP91-1379-000, an application for an optional certificate of public convenience and necessity authorizing it to: (1) Construct, own, and operate pipeline, compression and related facilities to be located between Kern River's previously authorized interstate pipeline system and several major natural gas processing plants in southwestern Wyoming; and (2) abandon all or any part of the authorized facilities or services Kern River determines are no longer needed upon expiration of the underlying contracts, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Kern River's proposed facilities will consist of 13.34 miles of 20-inch O.D. pipeline, 0.43 mile of 12.75-inch O.D. pipeline, 7,200 site-rated horsepower of compression, taps, meter stations and related facilities, designed to interconnect Kern River's previously authorized facilities and the Whitney Canyon, Carter Creek and Painter gas processing plants in southwestern Wyoming. All of the proposed facilities are located in Uinta County, Wyoming. From approximate milepost 39.6 on Kern River's 36-inch line, Kern River will construct 1.96 miles of 20-inch O.D. pipe extending west and then north to a new compressor station to be built by Kern River to be located in the northeast ¼ of Section 32, Township 16 north, Range 119 west. From that compressor station, containing two turbine units with a total of 7,200 site-rated horsepower of compression, one line of 12.75-inch O.D. pipe will extend 0.43 mile south to a new meter station near the Painter gas processing complex and a second line of 20-inch O.D. pipe will extend 11.38 miles in a northerly direction to Kern River's proposed measuring station located in the southwest ¼ of Section 16, Township 17 north, Range 119 west, adjacent to the Amoco Whitney Canyon plant.

The proposed facilities will be capable of transporting 220,000 Mcf of gas from the Whitney Canyon and Carter Creek plants and 118,000 Mcf of gas from the Painter complex on a firm bases for delivery into Kern River's 36-inch line. Kern River will construct the facilities in coordination with its construction of the previously authorized adjacent pipeline system. To permit such coordinated construction to occur, Kern River requests that the Commission grant the instant application by no later than July 1, 1991. Service is scheduled to commence in January, 1992.

The estimated capital cost of the proposed facilities is $22,367,000, including overhead, regulatory fees and the allowance for funds used during construction.

Kern River will render service on the proposed facilities to firm and interruptible shippers, in accordance with Kern River's executed firm transportation service agreements and Kern River's FERC Gas Tariff, previously submitted to the Commission.

*Comment date:* March 28, 1991, in accordance with Standard Paragraph F at the end of this notice.

**2. DEKALB Energy Co.**

[Docket No. CI90-63-001]

Take notice that on January 23, 1991, DEKALB Energy Company (DEKALB Energy) of 1625 Broadway, Denver, Colorado 80202, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory

Commission's (Commission) regulations thereunder requesting that the Commission amend the blanket certificate with pregranted abandonment previously issued to DEKALB Energy Canada Ltd. (DEKALB Canada) in Docket No. CI90–63–000 to reflect DEKALB Energy as the certificate holder, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Effective December 1, 1990, DEKALB Canada's authorization to import Canadian natural gas into the United States was transferred to DEKALB Canada's parent, DEKALB Energy. Therefore DEKALB Energy requests that the certificate previously granted to DEKALB Canada be amended to reflect DEKALB Energy as the certificate holder effective December 1, 1990.

*Comment date:* March 25, 1991, in accordance with Standard Paragraph J at the end of this notice.

### 3. Northern Natural Gas Co.

[Docket No. CP91–1472–000]

Take notice that on March 6, 1991, Northern Natural Gas Company (Northern), P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP91–1472–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Cibola Corporation (Cibola) under the blanket certificate issued by in Docket No. CP86–435–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Northern proposes to implement a transportation service agreement dated December 10, 1990, providing for a maximum transportation volume of 20,000 million Btu per day. It is indicated that Northern would receive the gas at specified points located in the states of Texas, Oklahoma, Kansas, New Mexico, Wisconsin, Iowa, Minnesota, and South Dakota and redeliver the gas at specified points located in the states of Texas and Kansas. Northern estimates peak day, average day, and annual volumes of 20,000 million Btu, 15,000 million Btu, and 7,300,000 million Btu, respectively. It is stated that Northern initiated a 120-day transportation service for Cibola on December 20, 1990, as reported in Docket No. ST91–7168–000.

Northern states that no new facilities would be required to implement the service and that it would charge the rates and abide by the terms and conditions of its Rate Schedule IT–1.

*Comment date:* April 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

### 4. ANR Pipeline Co.

[Docket No. CP91–1401–000]

Take notice that on February 28, 1991, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP91–1401–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service on behalf of Texas Gas Transmission Corporation (Texas Gas), all as more fully detailed in the application which is on file with the Commission and open to public inspection.

ANR proposes to abandon a transportation service which ANR was performing for Texas Gas pursuant to an agreement dated February 26, 1969, as amended December 19, 1969, and filed as Rate Schedule X–12 in ANR's FERC Gas Tariff Original Volume No. 2. It is stated that the transportation service was authorized by the Commission in Docket Nos. CP69–249 and CP70–163. It is explained that ANR was authorized to transport, on a firm basis, up to 100,000 Mcf of natural gas per day for Texas Gas from Calumet, Louisiana, to an interconnection of the facilities of ANR and Texas Gas near Eunice, Louisiana. It is asserted that ANR is requesting abandonment authorization in response to Texas Gas' request. It is stated that the transportation service was authorized for a primary term of 20 years, with year-to-year extensions thereafter. It is further stated that Texas Gas gave ANR timely notice of its desire to terminate the agreement with an effective date of February 28, 1991. It is asserted that there would be no loss of service as a result of the proposed abandonment. It is explained that no facilities would be abandoned in connection with the abandonment of the transportation service.

*Comment date:* March 28, 1991, in accordance with Standard Paragraph F at the end of this notice.

### 5. ANR Pipeline Co.

[Docket Nos. CP91–1416–000, CP91–1417–000, CP91–1418–000 and CP91–1419–000]

Take notice that ANR Pipeline Company, 500 Renaissance Center, Detroit, Michigan 48243, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88–532–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120–day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

*Comment date:* April 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

| Docket number (date filed) | Shipper name (type) | Peak day, average day, annual Dth | Receipt points [1] | Delivery points | Contract date, rate schedule, service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91–1416–000 (3–1–91) | Kaztex Energy Management, Inc. (marketer). | 1,000<br>1,000<br>365,000 | LA, OLA | WI | 12–3–90, FTS–1, Firm. | ST91–6606, 1–1–91. |
| CP91–1417–000 (3–1–91) | Chevron U.S.A. Inc. (marketer). | 50,000<br>50,000<br>18,250,000 | LA | OLA | 12–31–90, ITS, Interruptible. | ST91–6751, 1–5–91. |
| CP91–1418–000 (3–1–91) | Union Texas Petroleum Corp. (marketer). | 15,000<br>15,000<br>5,475,000 | OLA | LA | 10–19–90, ITS, Interruptible. | ST91–6608, 1–4–91. |

| Docket number (date filed) | Shipper name (type) | Peak day, average day, annual Dth | Receipt points [1] | Delivery points | Contract date, rate schedule, service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91-1419-000 (3-1-91) | Amerada Hess Corp. (marketer). | 150,000<br>150,000<br>54,750,000 | OTX | OTX | 8-16-90, ITS, Interruptible. | ST91-6750, 1-5-91. |

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

**6. Texas Eastern Transmission Corp.**

[Docket No. CP91-1356-000]

Take notice that on February 26, 1991, Texas Eastern Transmission Corportation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP91-1356-000 an application pursuant to section 7(b) of the Commission's Regulations under the Natural Gas Act for an order granting permission and approval for the abandonment of a firm transportation service of up to 20,000 dekatherms (Dt) per day and interruptible transportation service of up to 10,000 Dt per day for Texas Gas Transmission Corporation (Texas Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern states by Commission order issued August 5, 1982, in Docket No. CP82-295-000, it is authorized to transport for Texas Gas on a firm basis, 20,000 Dt per day of natural gas volumes. Texas Eastern further states that by Commission order issued on May 24, 1983, in Docket No. CP82-295-001, it is authorized to transport for Texas Gas on an interruptible basis an additional 10,000 Dt per day of natural gas. Texas Eastern states that it receives gas through an interconnection with Houston Pipe Line Company in Chambers County, Texas, and transports and redelivers such gas to an existing interconnection in Jefferson Davis Parish, Louisiana, or alternately to existing interconnections in Evangeline Parish, Louisiana or Claiborne Parish, Louisiana.

It is further stated that Texas Eastern requests authorization to abandon this transportation service pursuant to a letter from Texas Gas cancelling the agreement under which the gas is transported, effective November 15, 1990. It is also stated that Texas Eastern has agreed to waive the minimum two year written notice requirement as states in the service agreement. Texas Eastern further states that no facilities are proposed to be abandoned.

*Comment date:* March 28, 1991, in accordance with Standard Paragraph F at the end of this notice.

**7. Equitrans, Inc and Columbia Gulf Transmission**

[Docket Nos CP91-1408-000, CP91-1409-000, CP91-1410-000, CP91-1411-000, and CP91-1412-000]

Take notice that the above referenced companies (Applicants) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

*Comment date:* April 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

| Docket No.[2] (date filed) | Applicant | Shipper name | Peak day, average, annual [1] | Points of | | Start up date, rate schedule | Related dockets |
|---|---|---|---|---|---|---|---|
| | | | | Receipt | Delivery | | |
| CP91-1408-000 3-1-91 | Equitrans, Inc., 3500 Park Lane, Pittsburgh, PA 15275. | Harrison Energy, Inc. | 5,060<br>225<br>27,000 | PA | PA | 1-23-91, ITS | CP86-553-000, ST91-6976-000. |
| CP91-1409-000 3-1-91 | Equitrans, Inc., 3500 Park Lane, Pittsburgh, PA 15275. | Columbia Gas of Pennsylvania, Inc. | 30,362<br>4,000<br>604,000 | PA, WV | PA, WV | 112-1-90, ITS | CP86-553-000, ST91-7012-000. |
| CP91-1410-000 3-1-91 | Columbia Gulf Transmission Company, P.O. Box 683, Houston, TX 77001. | Mobil Natural Gas, Inc.. | 30,000<br>10,000<br>10,950,000 | LA | LA | 12-22-90, ITS-2 | CP86-239-000, ST91-6816-000. |
| CP91-1411-000 3-1-91 | Columbia Gulf Transmission Company, P.O. Box 683, Houston, TX 77001. | Union Texas Petroleum Corporation. | 50,000<br>20,000<br>7,300,000 | Off LA | LA | 12-25-90, ITS-2 | CP86-239-000, ST91-6308-000. |

| Docket No.[2] (date filed) | Applicant | Shipper name | Peak day, average, annual [1] | Points of | | Start up date, rate schedule | Related dockets |
|---|---|---|---|---|---|---|---|
| | | | | Receipt | Delivery | | |
| CP91-1412-000 3-1-91 | Columbia Gulf Transmission Company P.O. Box 683 Houston, TX 77001. | Union Texas Petroleum Corporation. | 35,000 15,000 5,475,000 | LA Off LA | LA, TN, MS | 10-18-90, ITS-1 and ITS-2. | CP86-239-000, ST91-6388-000. |

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

**8. Trunkline Gas Co.**

[Docket Nos. CP91-1425-000, CP91-1426-000, CP91-1427-000, CP91-1428-000, CP91-1429-000, CP91-1430-000, CP91-1431-000, CP91-1432-000]

Take notice that Trunkline Gas Company, P.O. Box 1642, Houston, Texas 77251-1642, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transaction under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

*Comment date:* April 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

| Docket number (date filed) | Shipper name (type) | Peak day, average day, annual Mcf | Receipt points [1] | Delivery points | Contract date, rate schedule, service type | Related docket, start update |
|---|---|---|---|---|---|---|
| CP91-1425-000 (3-1-91) | Enserch Gas Company (marketer). | 50,000 50,000 18,250,000 | LA, OLA, IL, TN, TX, OTX. | LA | 1-8-91, PT, Interruptible. | ST91-6915, 2-2-91. |
| CP91-1426-000 (3-1-91) | Tejas Power Corporation (marketer). | 100,000 100,000 36,500,000 | LA, OLA, IL, TN, TX, OTX. | IL | 9-7-89, PT, Interruptible. | ST91-6913, 2-2-91. |
| CP91-1427-000 (3-1-91) | Boyd Rosene and Associates, Inc. (marketer). | 5,000 5,000 1,825,000 | LA, OLA, IL, TN, TX, OTX. | LA | 12-20-90, PT, Interruptible. | ST91-6911, 2-1-91. |
| CP91-1428-000 (3-1-91) | Bishop Pipeline Corporation (intrastate pipeline). | 40,000 40,000 14,600,000 | LA, OLA, IL, TN, TX, OTX. | IN | 1-22-88, PT, Interruptible. | ST91-6910, 2-1-91. |
| CP91-1429-000 (3-1-91) | Eastex Hydrocarbons, Inc. (marketer). | 50,000 50,000 18,250,000 | LA, OLA, IL, TN, TX, OTX. | LA | 3-20-89, PT, Interruptible. | ST91-6784, 1-4-91. |
| CP91-1430-000 (3-1-91) | Enserch Gas Company (marketer). | 50,000 50,000 18,250,000 | LA, OLA, IL, TN, TX, OTX. | IL | 1-8-91, PT, Interruptible. | ST91-6908, 2-1-91. |
| CP91-1431-000 (3-1-91) | Panhandle Trading Company (marketer). | 50,000 50,000 18,250,000 | LA, OLA, IL, TN, TX, OTX. | IL | 3-20-89, PT, Interruptible. | ST91-6785, 1-4-91. |
| CP91-1432-000 (3-1-91) | TXG Gas Marketing Company (marketer). | 30,000 30,000 10,950,000 | LA, OLA, IL, TN, TX, OTX. | IL | 11-15-89, PT, Interruptible. | ST91-6781, 1-19-91. |

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

**9. Alabama-Tennessee Natural Gas Co.**

[Docket Nos. CP91-1393-00 and CP91-1403-000]

Take notice that Alabama-Tennessee Natural Gas Company, P.O. Box 918, Florence, Alabama 35631, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP89-2201-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

*Comment date:* April 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

| Docket number (date filed) | Shipper name (type) | Peak day, average day, annual Dth | Receipt [1] points | Delivery points | Contract date, rate schedule, service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91-1393-000 (2-28-91) | EFP South Corporation (end-user). | 600<br>600<br>216,000 | System | AL | 11-21-90, IT, Interruptible. | ST91-7063, 12-1-90. |
| CP91-1403-000 (2-28-91) | Union Camp Corporation (end-user). | 400<br>400<br>60,000 | System | AL | 9-12-90, IT, Interruptible. | 10-1-90. |

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

**10. Tennessee Gas Pipeline Co.**

[Docket No. CP91-1373-000]

Take notice that on February 27, 1991, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed an application in Docket No. CP91-1373-000 pursuant to section 7(b) of the Natural Gas Act and § 157.7 of the Commission's Regulations under the Natural Gas Act for authorization to partially abandon firm sales service to North Penn Gas Company (North Penn), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that on November 20, 1990, Tennessee and North Penn agreed to reduce North Penn's sales service entitlement from Tennessee under Rate Schedule CD-4 by 3,000 dt equivalent of natural gas per day, effective November 1, 1990, pursuant to the Commission's Regulations promulgated under Order Nos. 490 and 490-A. No abandonment of facilities is proposed.

*Comment date:* March 28, 1991, in accordance with Standard Paragraph F at the end of this notice.

**11. Tennessee Gas Pipeline Co.**

[Docket No. CP91-1372-000]

Take notice that on February 27, 1991, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed an application pursuant to section 7(b) of the Natural Gas Act and § 157.7 of the Commission's Regulations under the Natural Gas Act for authorization to partially abandon certain firm sales service to Connecticut Natural Gas Company (Connecticut), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that on October 12, 1989, Connecticut requested a conversion from firm sales to firm transportation pursuant to § 284.10 of the Commission's Regulations under the Natural Gas Act of 10,000 dt equivalent of natural gas per day, effective on November 1, 1989. It is indicated that as a result of the conversion, Connecticut's sales entitlements would be reduced to 27,751 dt equivalent of natural gas per day and 8,268,085 dt equivalent of natural gas annually. No abandonment of facilities is proposed.

*Comment date:* March 28, 1991, in accordance with Standard Paragraph F at the end of this notice.

**12. Trunkline Gas Co.**

[Docket Nos. CP91-1420-000, CP91-1421-000, CP91-1422-000, CP91-1423-000, and CP91-1424-000]

Take notice that on March 1, 1991, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77251-1642, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

*Comment date:* April 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

[5] These prior notice requests are not consolidated.

| Docket number, docket [3] (date filed) | Shipper name | Peak day,[1] average annual | Points of [2] | | Start up date, rate schedule, service type | Related contract date |
|---|---|---|---|---|---|---|
| | | | Receipt | Delivery | | |
| CP91-1420-000 (3-1-90) | Panhandle Trading Company. | 10,000<br>10,000<br>3,650,000 | IL, IN, LA, TN, TX, OLA, OTX. | IL | 2-1-91, PT, Interruptible. | ST91-6970-000, 1-25-91. |
| CP91-1421-000 (3-1-90) | Equitable Resources Marketing Company. | 75,000<br>75,000<br>27,375,000 | IL, IN, LA, TN, TX, OLA, OTX. | IL | 1-9-91, PT, Interruptible. | ST91-6765-000, 9-28-89. |
| CP91-1422-000 (3-1-90) | Elf Aquitaine, Inc. | 5,600<br>5,600<br>2,044,000 | OTX | OTX | 2-1-91, PT, Interruptible. | ST91-6865-000, 9-13-88. |
| CP91-1423-000 (3-1-90) | Entrade Corporation | 100,000<br>60,000<br>21,840,000 | IL, IN, LA, TN, TX, OLA, OTX. | IL | 2-1-91, PT, Interruptible. | ST91-6912-000, 7-11-90. |
| CP91-1424-000 (3-1-90) | Panhandle Trading Company. | 80,000<br>80,000<br>29,200,000 | IL, IN, LA, TN, TX, OLA, OTX. | LA | 2-1-91, PT, Interruptible. | ST91-6909-000, 5-24-88. |

[1] Quantities are shown in Mcf.
[2] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.
[3] If an ST docket is shown, 120-day transportation service was reported in it.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Standard Paragraph**

J. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91-6000 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

**[Docket Nos. CP91-1395-000, et al.]**

## Mississippi River Transmission Corp., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

**1. Mississippi River Transmission Corporation; Tennessee Gas Pipeline Company**

[Docket No. CP91-1395-000, Docket No. CP91-1396-000, Docket No. CP91-1404-000, Docket No. CP91-1407-000]

March 5, 1991.

Take notice that Mississippi River Transmission Corporation, 9900 Clayton Road, St. Louis, Missouri 63124, and Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP89-1121-000 and Docket No. CP87-115-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

*Comment date:* April 19, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

| Docket No. (date filed) | Shipper name (type) | Peak day, average day, annual MMBtu | Receipt points | Delivery points | Contract date, rate schedule, service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91-1395-000 (2-28-91) | Arkla Energy Marketing Company (Marketer/broker). | 8,000<br>8,000<br>1,464,000 | AR, LA, OK, TX, IL | AR | 12-20-90, FTS, Firm. | ST91-6695-000, 1-1-91. |
| CP91-1396-000 (2-28-91) | River Trading Company (Marketer/broker). | 14,000<br>2,000<br>730,000 | AR, IL, LA, TX | MO | 12-26-90, ITS, Interruptible. | ST91-6694-000, 1-1-91. |
| CP91-1404-000 (2-28-91) | Bishop Pipeline Corporation (Marketer/broker). | 20,900<br>19,900<br>7,263,500 | OK, TX, IL, LA, AR | MO, IL | 1-15-90 ITS, Interruptible. | ST91-6429-000, 10-9-90. |

| Docket No. (date filed) | Shipper name (type) | Peak day, average day, annual MMBtu | Receipt points | Delivery points | Contract date, rate schedule, service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91-1407-000 (3-1-91) | Suncor, Inc. (Producer) ... | 100,000<br>100,000<br>36,500,000 | Various..... | OH, NY, NJ, PA..... | 1-31-91, IT, Interruptible. | ST91-7088-000, 2-9-91. |

[1] Tennessee's quantities are in dekatherms.

**2. Southern Natural Gas Company, Colorado Interstate Gas Company**

[Docket No. CP91-1359-000, Docket No. CP91-1360-000, Docket No. CP91-1361-000, Docket No. CP91-1362-000, Docket No. CP91-1363-000, Docket No. CP91-1366-000]

March 5, 1991.

Take notice that Applicants filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, have been provided by Applicants and are summarized in the attached appendix.

[2] These prior notice requests are not consolidated.

Applicants states that each of the proposed services would be provided under an executed transportation agreement, and that Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

*Comment date:* April 19, 1991, in accordance with Standard Paragraph G at the end of this notice.

Applicant: Southern Natural Gas Company, Post Office Box 2563, Birmingham, AL 35202-2563

Blanket Certificate: Issued in Docket No. CP88-316-000

| Docket No. (date filed) | Shipper name (type shipper) | Peak day [1], average, annual | Points of | | Start up date, rate schedule | Related [2] dockets |
|---|---|---|---|---|---|---|
| | | | Receipt | Delivery | | |
| CP91-1359-000 (02-26-91) | City of America, GA (LDC). | 1,508<br>1,508<br>550,420 | Offshore TX, Offshore LA, TX, LA, MS, AL. | AL..... | 01-01-91, FT..... | ST91-6362-000. |
| CP91-1360-000 (02-26-91) | Dekalb-Cherokee Counties Gas District (LDC). | 1,907<br>1,907<br>696,055 | Offshore TX, Offshore LA, TX, LA, MI, AL. | AL..... | 01-01-91, FT..... | ST91-6379-000. |
| CP91-1361-000 (02-26-91) | City of Adel, GA (LDC).... | 319<br>319<br>116,435 | Offshore LA, Offshore TA, TX, LA, MI, AL. | AL..... | 01-01-91, FT..... | ST91-6363-000. |
| CP91-1362-000 (02-26-91) | City of Cordele, GA (LDC). | 704<br>704<br>256,960 | Offshore TX, Offshore LA, TX, LA, MI, AL. | AL..... | 01-01-91, FT..... | ST91-6365-000. |
| CP91-1363-000 (02-26-91) | Alabama Gas Corporation (LDC). | 70,000<br>70,000<br>25,550,000 | Offshore TX, Offshore LA, TX, LA, MI, AL. | AL..... | 01-01-91, FT..... | ST91-6380-000. |

[1] Quantities are shown in Mcf unless otherwise indicated.
[2] If an ST docket is shown, 120-day transportation service was reported in it.

Applicant: Colorado Interstate Gas Company, Post Office Box 1087, Colorado Springs, Colorado 80944

Blanket Certificate: Issued in Docket No. CP86-589-000

| Docket No. (date filed) | Shipper name (type shipper) | Peak day [1], average, annual | Points of | | Start up date, rate schedule | Related [2] dockets |
|---|---|---|---|---|---|---|
| | | | Receipt | Delivery | | |
| CP91-1366-000 (02-26-91) | Cross Timbers Oil Company, L.P. (Marketer). | 4,500<br>4,500<br>1,560,000 | OK..... | CO..... | 11-01-90, TI-1..... | ST91-5572-000. |

### 3. Trunkline Gas Company

[Docket Nos. CP91-1386-000,[3] CP91-1387-000, CP91-1388-000, CP91-1389-000, CP91-1390-000, CP91-1391-000, CP91-1392-000]

March 5, 1991.

Take notice that on February 28, 1991, Trunkline Gas Company (Applicant), filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

*Comment date:* April 19, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

| Docket No.[2] (date filed) | Applicant | Shipper name | Peak day [1] average, annual | Points of | | Start up date, rate schedule | Related dockets |
|---|---|---|---|---|---|---|---|
| | | | | Receipt | Delivery | | |
| CP91-1386-000 2-28-91 | Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251-1642. | Kerr-McGee Corporation. | 15,000 15,000 5,475,000 | Off LA | LA | 1-1-91, PT | CP86-586-000, ST91-6696-000. |
| CP91-1387-000 2-28-91 | Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251-1642. | Equitable Resources Marketing Company. | 75,000 75,000 27,375,000 | LA, IL, TN, TX, Off LA, Off TX. | IN | 1-1-91, PT | CP86-586-000, ST91-6664-000. |
| CP91-1388-000 2-28-91 | Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251-1642. | Howell Gas Management Company. | 50,000 50,000 18,250,000 | LA, IL, TN, TX, Off LA, Off TX. | IL | 1-1-91, PT | CP86-586-000, ST91-6697-000. |
| CP91-1389-000 2-28-91 | Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251-1642. | Phibro Distributors Corporation. | 100,000 100,000 36,500,000 | LA, IL, TN, TX, Off LA, Off TX. | LA | 1-1-91, PT | CP86-586-000, ST91-6666-000. |
| CP91-1390-000 2-28-91 | Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251-1642. | Polaris Pipeline Corporation. | 30,000 30,000 10,950,000 | LA, IL, TN, TX, Off LA, Off TX. | IL | 1-1-91, PT | CP86-586-000, ST91-6668-000. |
| CP91-1391-000 2-28-91 | Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251-1642. | Bishop Pipeline Corporation. | 10,000 10,000 3,650,000 | LA, IL, TN, TX, Off LA, Off TX. | IL | 1-5-91, PT | CP86-586-000, ST91-6766-000. |
| CP91-1392-000 2-28-91 | Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251-1642. | Conoco, Inc. | 5,000 5,000 1,825,000 | LA, IL, TN, TX, Off LA, Off TX. | TN | 1-1-91, PT | CP86-586-000, ST91-6669-000. |

[1] Quantities are shown in Mcf unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

### 4. ANR Pipeline Company, ANR Pipeline Company, ANR Pipeline Company, ANR Pipeline Company

[Docket No. CP91-1397-000, Docket No. CP91-1398-000, Docket No. CP91-1399-000, Docket No. CP91-1400-000]

March 5, 1991.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

*Comment days:* April 19, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

| Docket No. (date filed) | Applicant | Shipper name | Peak day,[1] average, annual | Points of | | Start up date, rate schedule | Related [2] dockets |
|---|---|---|---|---|---|---|---|
| | | | | Recipt | Delivery | | |
| CP91-1397-000 2/28/91 | ANR Pipeline Company, 500 Renaissance Center Detroit, MI 48243. | Scot Forge | 600<br>600<br>219,000 | Offshore LA | WI | FTS-1, Firm, 1/1/91. | CP88-532-000, ST91-6610-000. |
| CP91-1398-000 2/28/91 | ANR Pipeline Company, 500 Renaissance Center Detroit, MI 48243. | NGC Transportation, Inc. | 3,000<br>3,000<br>1,095,000 | Offshore Federal-LA. | LA | ITS, Interruptible, 1/1/91 | CP88-532-000, ST91-6611-000. |
| CP91-1399-000 2/28/91 | ANR Pipeline Company, 500 Renaissance Center Detroit, MI 48243. | ENRON Gas Marketing, Inc. | 100,000<br>100,000<br>36,500,000 | Offshore LA, TX, OK, KS. | LA | ITS, Interruptible, 1/1/91. | CP88-532-000, ST91-6603-000. |
| CP91-1400-000 2/28/91 | ANR Pipeline Company, 500 Renaissance Center Detroit, MI 48243. | Arco Natural Gas Marketing, Inc. | 200,000<br>200,000<br>73,000,000 | Offshore LA, TX | LA | ITS, Interruptible, 1/1/91. | CP88-532-000, ST91-6612-000. |

[1] Quantities are shown in DTH unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

**5. Great Lakes Gas Transmission Limited Partnership**

[Docket No. CP91-1452-000]

March 6, 1991.

Take notice that on March 5, 1991, Great Lakes Gas Transmission Limited Partnership (Great Lakes), suite 1600, One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP91-1452-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Northern States Power Company (MN & WI), a distributor, under the blanket certificate issued in Docket No. CP89-2198-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Great Lakes states that, pursuant to an agreement dated December 21, 1990, under its Rate Schedule IT, it proposes to transport up to 35,000 Mcf per day of natural gas. Great Lakes indicate that the gas would be transported from Michigan, and would be redelivered in Minnesota and Michigan. Great Lakes further indicates that it would transport 35,000 Mcf on an average day and 12,775,000 Mcf annually.

Great Lakes advises that service under § 284.223(a) commenced December 22, 1990, as reported in Docket No. ST91-6531-000.

*Comment date:* April 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

**6. Questar Pipeline Company**

[Docket No. CP91-1252-000]

March 6, 1991.

Take notice that on February 14, 1991, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111 filed in Docket No. CP91-1252-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for authority to provide open-access storage service at its Clay Basin Storage Field (Clay Basin) located in Daggett County, Utah, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Questar seeks a blanket certificate of public convenience and necessity, with pregranted abandonment authority, authorizing it to provide open-access firm and interruptible storage services under proposed Storage Service Rate Schedules FSS and ISS and in accordance with the general terms and conditions of its pro forma open-access storage tariff. Questar states that its pro forma tariff incorporates (1) a statement of rates, (2) Rate Schedule FSS, covering firm storage service, and Rate Schedule ISS, related to interruptible storage service, (3) General Terms and Conditions delineating the specific operating procedures to be followed by Questar and its storage buyers and (4) a form of service agreement for service provided under Rate Schedules FSS and ISS.

Questar requests the following additional authorizations related to open-access: (1) Certificate authority to increase the annual working-gas volume of Questar's Transmission Division from 7.5 Bcf to 10.0 Bcf and decrease the annual working-gas volume of Northwest Pipeline Corporation (Northwest) from 20.0 Bcf to a substantially decreased level (currently estimated to be 10.2 Bcf), to be specified by Northwest on or before May 1, 1991; (2) approval to "grandfather" Questar's and Northwest's Clay Basin firm service priorities and (3) authority to abandon existing Storage Service Rate Schedules S-1 and S-3.

Questar's open-access storage proposal includes the following elements:

1. *Open Season:* Questar proposes to publish notification of its upcoming open season on March , 1991, and hold the open season from March 16 through March 31, 1991.

2. *Priority of Service:* During the open season, Questar states that it would determine firm service priority based upon the present value of the demand charges over the term of the applicable service agreement. After the open season, Questar indicates that firm service priority would be first-come, first-served based upon request for service date and that interruptible service priority would be determined by

the inventory rate that potential Buyers wish to pay.

3. *Capacity Allocation:* Questar proposes to allocate firm and interruptible withdrawal capacity and firm injection capacity through the use of three allocation formulas that take into account working and cushion-gas inventories, maximum possible reservoir deliverability and minimum required deliverability.

4. *Proposed Rates:*

RATE SCHEDULE FSS

| | Proposed rates (Mcf) | |
|---|---|---|
| | Maximum | Minimum |
| Demand: | | |
| Deliverability (Monthly) | $3.19382 | $0.00000 |
| Inventory capacity (Monthly) | 3.02662 | 0.00000 |
| Commodity: | | |
| Injection | [1] 0.02084 | [1] 0.02084 |
| Withdrawal | 0.01902 | 0.01902 |
| Authorized Overrun | 0.33840 | 0.01902 |

[1] For first storage season under open access; effective May 15, 1992, the rate would decrease to $0.01062/Mcf.

RATE SCHEDULE ISS

| | Proposed rates (Mcf) | |
|---|---|---|
| | Maximum | Minimum |
| Inventory (Monthly) | $0.07000 | $0.0000 |
| Injection | [1] 0.02084 | [1] 0.02084 |
| Withdrawal | 0.01902 | 0.01902 |

[1] For first storage season under open access; effective May 15, 1992, the rate would decrease to $0.01602/Mcf.

5. *Rate Assumptions:* Questar indicates that rates include the following assumptions: (1) Rate base at November 30, 1990, adjusted solely for additional cushion gas requirements of 17.0 Bcf at a spot market price of $1.29 per Mcf; (2) 14 percent return on equity; (3) actual capital structure and debt costs at November 30, 1990; and (4) 4.1 percent depreciation rate.

6. *Rate Design:* Questar states that the Equitable four-part rate design, reflecting costs associated with deliverability, inventory capacity, injection and withdrawal, would be used for firm rates. It is indicated that fixed costs are split 50/50 and assigned to the demand deliverability and inventory capacity charges and that variable costs are equally assigned to the commodity injection and withdrawal charges. Irrespective of whether open-access authority is received, Questar also indicates that a 100 percent load factor rate, based upon the fewest number of days required to withdraw the working gas inventory, is utilized for interruptible rates.

In the event that the Commission has not issued an acceptable open-access blanket and related requests by May 15, 1991, Questar seeks two interim authorizations, by May 15, 1991, that will permit Clay Basin storage capacity to become fully subscribed, by firm or interruptible buyers, and Rate Schedules S-1 and S-3, as amended, to remain in effect for a limited term that will expire upon implementation of open-access service. Questar states that the proposed modifications to existing Rate Schedules S-1 and S-3 under the alternative request include (1) increasing Questar's annual working-gas volume from 7.5 Bcf to 10.0 Bcf, (2) decreasing Northwest's annual working-gas level to that level determined by Northwest on or before May 1, 1991, (3) revising cushion gas levels for the 1991-1992 withdrawal season, (4) incorporating new daily withdrawal and injection allocation formulas, (5) changing the definition of "proration factor" appearing in Rate Schedule S-3 and (6) removing prohibitive tariff language in order that self-implementing firm storage service may be offered at Clay Basin under 18 CFR 157.213. Irrespective of whether open-access authority is received Questar also requests that it be permitted to maintain separate valuation for its new cushion gas inventory and to price future withdrawals accordingly.

*Comment date:* March 27, 1991, in accordance with Standard Paragraph F at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91-6007 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TQ91-2-1-001]**

## Alabama-Tennessee Natural Gas Company; Notice of Proposed PGA Rate Adjustment

March 7, 1991.

Take notice that on March 1, 1991, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

Alternate Twenty-Fifth Revised Sheet No. 4

The tariff sheet is proposed to become effective April 1, 1991. Alabama-Tennessee states that the purpose of this filing is to adjust its rates to conform to the rates of its suppliers and to substitute for a filing tendered the previous day which contained erroneous information.

Alabama-Tennessee has also requested a limited waiver on a continuing basis of § 154.22 of the

Commission's Regulations with regard to the preparation of its quarterly PGA. Alabama-Tennessee states that virtually without exception, it faces difficulties in obtaining accurate information from Tennessee Gas Pipeline Company (Tennessee), its upstream supplier, in connection with the preparation of its quarterly PGA filing. This information must be obtained in sufficient time so that there will be no lag in time between the effective date of Tennessee's revised quarterly PGA and that of Alabama-Tennessee. Alabama-Tennessee proposes that it be permitted to file revisions to its quarterly PGA filing three days after the filing of the revised quarterly PGA of Tennessee, and that Alabama-Tennessee's quarterly PGA filing be permitted to become effective on less than thirty days notice, on the same effective date as that of Tennessee's revised PGA. Alabama-Tennessee states that granting this limited waiver will provide Alabama-Tennessee adequate time to prepare its quarterly PGA filing accurately, but will prejudice no one because it will still provide the public nearly thirty days notice.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional sales and transportation customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such protests should be filed on or before March 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91-6001 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TA91-1-31-002]**

## Arkla Energy Resources; Filing of Revised Tariff Sheets Reflecting Quarterly PGA Adjustment

March 7, 1991.

Take notice that on March 4, 1991, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following tariff sheets to become effective April 1, 1991:

2nd Revised Volume No. 1
3nd Revised Original Sheet No. 11
2nd Revised Volume No. 1
2nd Revised Original Sheet No. 16

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such protests should be filed on or before March 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91-6017 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TQ91-3-21-001]**

## Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 7, 1991.

Take notice that Columbia Gas Transmission Corporation (Columbia) on February 28, 1991, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective February 1, 1991.

Substitute Ninth Revised Sheet No. 26
Substitute Ninth Revised Sheet No. 26A
Substitute Ninth Revised Sheet No. 26B
Substitute Eighth Revised Sheet No. 163

Columbia states that the foregoing tariff sheets are being filed in compliance with the Commission's order issued February 1, 1991 in Docket Nos. TQ91-3-21-000 and TM91-7-21-000. Such order directed Columbia to refile its PGA tariff sheets to be effective February 1, 1991, to track the rates reflected on Tennessee Gas Pipeline Company's (Tennessee) alternative tariff sheets accepted by the Commission's December 28, 1990 order.

Columbia notes, however, these alternative tariff sheets were never placed in effect by Tennessee. The rates that Columbia has reflected for Tennessee for the instant filing are those filed in Tennessee's Interim PGA adjustment filed on January 4, 1991.

In addition to the revised pipeline rates for Tennessee, Columbia has also reflected in the instant filing revised rates for Texas Eastern Transmission Corporation (Texas Eastern). The rates in the instant filing reflect Texas Eastern's Interim PGA adjustment which was filed on January 31, 1991 with an effective date of February 1, 1991.

The sales rates set forth on Substitute Ninth Revised Sheet No. 26 reflect an increase of $.04¢ per Dth in the Commodity rate and a decrease of $0.003 per Dth in the Demand rate when compared with the rates contained in Columbia's December 31, 1990 PGA filing.

Columbia states that a copy of the filing is being served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such protests should be filed on or before March 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91-6004 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TQ91-5-24-001]**

## Equitrans, Inc.; Proposed Change in FERC Gas Tariff

March 7, 1991.

Take notice that Equitrans, Inc. (Equitrans) on March 1, 1991, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

*Effective March 1, 1991:*

Sub. Twenty-Fourth Revised Sheet No. 10
Sub. Fourteenth Revised Sheet No. 34

*Effective April 1, 1991:*

Substitute Fifteenth Revised Sheet No. 34

Equitrans states that the foregoing tariff sheets are being filed in compliance with the Commission's Letter Order issued February 25, 1991, in

Docket No. TQ91-5-24-000. The order directed Equitrans to refile its rates to reflect the producer demand costs in the commodity portion of Equitrans' rates.

Substitute Fifteenth Revised Sheet No. 34 reflects the seasonality of Equitrans rates by showing the summer demand component of Rate Schedule ISS effective April 1, 1991.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such protests should be filed on or before March 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91-6011 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TQ91-8-4-000]**

## Granite State Gas Transmission, Inc. Changes in Rates

March 7, 1991.

Take notice that on March 5, 1991, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581-5039, filed Fifth Revised Sheet No. 21 in its FERC Gas Tariff, Second Revised Volume No. 1, containing changes in rates for effectiveness on April 1, 1991.

According to Granite State, the filing comprises its regular quarterly purchased gas cost adjustment based on projected gas costs and sales for the second quarter of 1991.

Granite State further states that the revised rates are applicable to its wholesale sales to its affiliated distribution company customers: Bay State Gas Company and Northern Utilities, Inc.

Granite State states that copies of its filing were served upon its customers and the regulatory commissions of the states of Maine, New Hampshire and Massachusetts.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedures 18 CFR 385.214. All such motions or protests should be filed on or before March 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91-6015 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TA91-1-46-000]**

## Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

March 7, 1991.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on March 1, 1991, tendered for filing with the Federal Energy Regulatory Commission (Commission) its annual PGA filing, which includes Twenty-Seventh Revised Sheet No. 41 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective May 1, 1991.

Kentucky West states that Twenty-Seventh Revised Sheet No. 41 reflects a deferred gas cost adjustment of ($0.0553) and a ($.7740) current adjustment decrease based on an average cost of purchased gas effective May 1, 1991, of $1.7060. This average cost of gas reflects Kentucky West's exercise of contractual provisions, pursuant to its obligations under various gas purchase agreements, so as to provide for a total price of $1.7028 per dth inclusive of all taxes and any other production-related cost add-ons that it would pay under these contracts.

Kentucky West states that, by its filing, or any request or statement made therein, it does not waive any rights to collect amounts, nor the right to collect carrying charges applicable thereto, to which it is entitled pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit issued on March 6, 1986, in *Kentucky West Virginia Gas Co.* v. *FERC*, 780 F.2d 1231 (5th Cir. 1986), or to which it becomes entitled pursuant to any other judicial and/or administrative decisions.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 27, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91-6005 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. PR91-12-000]**

## Louisiana Intrastate Gas Corp.; Petition for Rate Approval

March 7, 1991.

Take notice that on March 1, 1991, Louisiana Intrastate Gas Corporation (LIG) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of 21 cents per MMBtu plus an allowance for pro rata compressor fuel and system losses for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978.

LIG's petition states that it is an intrastate pipeline in Louisiana within the meaning of section 2(16) of the NGPA. The petition also states that while LIG continues to believe that its system-wide rate should include costs and volumes for its Eloi Pipeline, it has adjusted these costs and volumes out of its cost-of-service. LIG's previous rate for section 311(a)(2) service was 21 cents per MMBtu which was approved by the Commission in Docket Nos. ST88-2555-000, *et al.*

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not

in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with 18 CFR 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before March 26, 1991. The petition for rate approval is on file with the Commission and is available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91-6019 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TA91-1-5-001]**

## Midwestern Gas Transmission Co. Rate Filing Pursuant to Tariff Rate Adjustment Provisions

March 7, 1991.

Take notice that on March 1, 1990, Midwestern Gas Transmission Company (Midwestern), pursuant to § 154.305(c)(4) of the Commission's regulations, filed the following revised tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff to be effective April 1, 1990:

Substitute Twenty-Third Revised Sheet No. 5
Substitute Eighteenth Revised Sheet No. 6
Fourth Revised Sheet No. 46
Third Revised Sheet No. 55

Midwestern states that the purpose of its revisions is to correct the rates in its annual Purchased Gas Adjustment (PGA), designate changes in fuel retention percentages to reflect current levels and reflect the latest gas costs of its principal supplier.

Midwestern states that the Current Purchased Gas Cost Rate Adjustments reflected on Revised Sheet Nos. 5 and 6 consist of a $.0001 per dekatherm adjustment to the gas rate, a $.0033 per dekatherm adjustment to Rate Schedule SR-1 and a $.04 per dekatherm adjustment applicable to the demand rate. The stated adjustments reflect changes from the rates filed in Docket No. TQ91-2-5.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such protests should be filed on or before March 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91-6016 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP91-71-001]**

## Mississippi River Transmission Corp.; Rate Change Filing

March 7, 1991.

Take notice that on February 28, 1991, Mississippi River Transmission Corporation (MRT) tendered for filing Substitute Eleventh Revised Sheet No. 4A.2 to its FERC Gas Tariff, Second Revised Volume No. 1 to be effective February 14, 1991.

MRT states that the purpose of this filing is to comply with the Commission's Order in docket No. RP91-71-000 issued on February 13, 1991. The Order required MRT to reallocate, to its other customers paying a fixed take-or-pay charge, fifty percent of the costs that otherwise would be allocated to MRT's small customers under MRT's revised allocation method, in accordance with the Commission's Order No. 528-A. In compliance with that directive, MRT has reallocated fifty percent of the Rate Schedule SGS-1 customers' take-or-pay allocation under the D-1 method to MRT's other customers paying a fixed charge.

MRT is mailing a copy of the revised tariff sheet to each of the intervenors, MRT's jurisdictional sales customers and to the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such protests should be filed on or before March 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91-6008 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TM91-1-27-002]**

## North Penn Gas Co.; Compliance Filing

March 7, 1991.

Take notice that North Penn Gas Company (North Penn) on February 26, 1991 tendered for filing First Revised First Revised Sheet No. 3A to its FERC Gas Tariff, First Revised Volume No. 1.

The revised tariff sheet is being filed in compliance with the Federal Energy Regulatory Commission's (Commission) letter order dated February 14, 1991 in Docket Nos. TQ90-2-27-001 and TQ90-2-27-002, which reference an original Commission letter order dated January 18, 1991 in Docket No. RP91-60-000, to reflect standby charges as a separately identified component of the rates. The revised tariff sheet also sets forth the ACA Surcharge rate of $0.0019 per Mcf to recover the Commission's annual charges, and is proposed to be effective October 1, 1990.

While North Penn believes that no other waivers are necessary in order to permit this filing to become effective October 1, 1990, as proposed, North Penn respectfully requests waive of any of the Commission's Rules and Regulations as may be required to permit this filing to become effective October 1, 1990, as proposed.

North Penn states that copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and State Commissions shown on the service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such protests should be filed on or before March 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to

intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91-6009 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP90-161-003]**

## Northern Natural Gas Co.; Filing

March 7, 1991.

Take notice that on February 12, 1991, Northern Natural Gas Company (Northern) filed pursuant to § 154.67(a) (18 CFR 154.67(a) of the Federal Energy Regulatory Commission's (Commission) regulations, a motion to effectuate its proposal to require that nominations for service on the first calendar day of any month be submitted four work days prior to the first day of the month, except for nominations for service in the Gulf Coast which shall continue to be required two work days prior to the first day of the month. Northern states that its proposal was accepted and suspended by the Commission to be effective February 12, 1991, by order issued on September 13, 1990.

Northern proposes to effectuate the change to its nomination procedures as reflected in the staff sheets. Northern moves to allow the suspended tariff changes to go into effect in order to provide for the four-work-days-prior nomination procedure.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washintgton, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and procedure (18 CFR 385.214 and 211). All such protests should be filed on or before March 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to made protestant parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this mater. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91-6018 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP91-113-000]**

## Panhandle Eastern Pipe Line Co. Proposed Changes in FERC Gas Tariff

March 7, 1991.

Take notice that on March 5, 1991 Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251-1642, tendered for filing Second Revised Sheet No. 32-BS to its FERC Gas Tariff, Original Volume No. 1 with the proposed effect date of April 4, 1991.

Panhandle states that Second Revised Sheet No. 32-BS reflects a modification to section 6.9(i) of Rate Schedule PT-Firm, to change the required payment of one (1) month's reservation charge which must accompany a request by a shipper for firm service to the lesser of one (1) month's reservation charge or $10,000.

Panhandle is proposing this change to establish a cap of $10,000 on the amount of the deposit required by any shipper seeking firm transportation service. The provision, when approved, will be applied prospectively for all shippers requesting firm transportation service.

Panhandle states that copies of this letter and enclosures are being served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such petitions or protests should be filed on or before March 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91-6002 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP88-262-012]**

## Panhandle Eastern Pipe Line Company; Proposed Changes in FERC Gas Tariff

March 7, 1991.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on March 1, 1991, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Twelfth Revised Sheet No. 3-F
Seventh Revised Sheet No. 3-G
Fifth Revised Sheet No. 3-H
Fifth Revised Sheet No. 3-I

The proposed effective date of these revised tariff sheets is April 1, 1991.

Panhandle states that these revised tariff sheets are being filed in compliance with a Trial Stipulation in Docket No. RP88-262-000, *et al.* stipulated by the parties and approved by the Presiding Administrative Law Judge in his Initial Decision, Panhandle Eastern Pipe Line Co., 53 FERC ¶ 63,003 at p. 65,008 (1990).

Panhandle further states that the revised tariff sheets filed herewith reflect a revision to the percentage of gas to be retained by Panhandle for fuel reimbursement for Firm and Interruptible transportation pursuant to Rate Schedule PT. The fuel reimbursement percentages set forth on the revised tariff sheets are as stipulated in Appendix C of the Trial Stipulation (Exhibit No. 381).

Panhandle states that copies of its filing have been served on all affected customers, parties to the referenced proceeding and applicable state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such protests should be filed on or before March 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91-6012 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. PR91-11-000]**

## Red River Pipeline Petition for Rate Approval

March 7, 1991.

Take notice that on March 1, 1991, Red River Pipeline (Red River) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for

rate approval requesting that the Commission approve as fair and equitable a maximum rate of 22.28 cents per Mcf plus an allowance for actual compressor fuel and system losses for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978.

Red River's petition states that it is an intrastate pipeline in Texas within the meaning of section 2(16) of the NGPA. Red River's previous rate for section 311(a)(16) of the NGPA. Red River's previous rate for section 311(a)(2) service was 25.03 cents per Mcf which was approved by the Commission June 2, 1989 in Docket Nos. ST82–95–000 *et al.*

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with 18 CFR 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before March 26, 1991. The petition for rate approval is on file with the Commission and is available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91–6013 Filed 3–13–91; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP90–139–007]**

## Southern Natural Gas Co. Proposed Changes in FERC Gas Tariff

March 7, 1991.

Take notice that on March 1, 1991, Southern Natural Gas Company (Southern) tendered for filing the following tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective April 1, 1989, October 1, 1988 and January 1, 1977, respectively.

Substitute Original Sheet No. 30Z.02
Substitute Original Sheet No. 30Z.14
Substitute Fourth Revised Sheet No. 45

Southern states that it submits the substitute sheets listed above the correct typographical errors discovered on the sheets when Sixth Revised Volume No. 1 of Southern's FERC Gas Tariff was submitted in electronic medium in the captioned docket. Southern has requested a waiver of the Commission's Regulations to make these substitute sheets effective as of their last-approved effective dates indicated above.

Southern states that copies of the filing were mailed to Southern's customers and interested state commissions, as well as the parties listed on the Commission's official service list compiled in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such protests should be filed on or before March 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91–6003 Filed 3–13–91; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TA91–1–17–002]**

## Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 7, 1991.

Take notice that on March 4, 1991, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, the tariff sheets identified on appendices A and B attached to the filing, for inclusion in its FERC Gas Tariff, First Revised Volume No. 1 to be effective February 1, 1991.

Texas Eastern states that the purpose of its filing is to comply with the Commission's "Order Accepting and Suspending Tariff sheets Subject to Refund and Conditions, and Establishing Technical Conference" issued on January 31, 1991, in the above-referenced proceeding. Texas Eastern further states that the purpose of the filing is to revise tariff sheets filed November 30, 1990 in its annual Purchased Gas Adjustment (PGA).

Texas Eastern states that appendix A includes tariff sheets reflecting adjustments to its rates as required by the Commission's January 31, 1991 order in Docket No. TA91–17–1–000 and that Appendix A includes tariff sheets for other dockets identified thereon which were filed subsequent to its PGA filing of November 30, 1990.

Texas Eastern states that appendix B proposes alternative tariff sheets reflecting the specific data and revisions required by the January 31, 1991 Commission order in Docket No. TA91–17–1–000 and include the $8.2 million in overrun charges paid to United Gas Pipe Line Company which Texas Eastern again requests that the Commission approve in this filing. Texas Eastern states further that appendix B includes refiling of tariff sheets for the other dockets (noted above) filed subsequent to the November 30, 1990 PGA filing which are affected by the revision in Texas Eastern's surcharge.

Texas Eastern states that this filing makes various revisions and explanations to support its PGA filing as required by the Commission's eight ordering paragraphs and in the body of the January 31, 1991 order. However, Texas Eastern states that it requests privileged treatment under § 388.112 of the Commission's Regulations (18 CFR 388.112) for certain privileged and confidential documents submitted for Commission review and is omitting such information for public review and service on all parties.

Texas Eastern states that it is filing a request for rehearing of the Commission's January 31, 1991 order and submits these tariff sheets without prejudice to Texas Eastern's rights on rehearing or its position in Docket No. TA91–1–17–000.

To the extent required, if any, Texas Eastern requests waiver of any regulations that the Commission may deem necessary to accept the tariff sheets in Appendices A and B.

Texas Eastern states that copies of the filing were served upon Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such protests should be filed on or before March 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission

and are available for public inspection, subject to the limitations 18 CFR 388.112.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91-6006 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP90-132-003]**

### United Gas Pipe Line Company; Refund Report

March 7, 1991.

Take notice that on March 1, 1991, United Gas Pipe Line Company (United) tendered for filing a refund report of amounts due customers under United's Docket No. RP90-132.

United states that this filing responds to Order No. 528 without prejudice to United refiling in conformity with the principles of Order No. 528. In accordance with the Commission's directive, United has refunded with interest amounts previously collected under Docket No. RP90-132 in accordance with Order No. 528.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such protests should be filed on or before March 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91-6010 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

**[Docket Nos. ER91-196-000 and EL91-17-000]**

### Washington Water Power Company; Initiation of Proceeding and Refund Effective Date

March 8, 1991.

Take notice that on March 1, 1991, the Commission issued an order initiating a proceeding in Docket No. EL91-17-000 under section 206 of the Federal Power Act, as amended by the Regulatory Fairness Act of 1988.

Refund effective date: May 13, 1991.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91-6014 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

## Office of Fossil Energy

**[Docket No. FE C&E 91-09; Certification Notice-77]**

### Filing Certification of Compliance: Coal Capability of New Electric Powerplant Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of Filing.

**SUMMARY:** Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (FUA section 201(a), 42 U.S.C. 8311 (a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of proposed new electric base load powerplant has a filed self-certification in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

**SUPPLEMENTARY INFORMATION:** The following company has a filed self-certification:

| Name | Date received | Type of facility | Megawatt capacity | Location |
|---|---|---|---|---|
| March Point Cogeneration Co., Anacortes, WA | 02-28-91 | Combine Cycle | 140 | Anacortes, WA |

Amendments to the FUA on May 21, 1987 (Public Law 100-42), altered the general prohibitions to include only new electric base load powerplants and to provide for the self-certification procedure.

Copies of this self-certification may be reviewed in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, or for further information call Myra Couch at (202) 586-6769.

Issued in Washington, DC on March 8, 1991.

**Anthony J. Como,**

*Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.*

[FR Doc. 91-6105 Filed 3-13-91; 8:45 am]

BILLING CODE 6450-01-M

## Office of Hearings and Appeals

### Proposed Implementation of Special Refund Procedures

**AGENCY:** Office of Hearings and Appeals, Department of Energy.

**ACTION:** Notice of proposed implementation of special refund procedures.

**SUMMARY:** The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $9,000,000.00, plus accrued interest, in alleged crude oil and refined petroleum product violation amounts obtained by the DOE under the terms of a consent order entered into with Good Hope Refineries (Good Hope), Case No. LFX-0002. The OHA has tentatively determined that the funds will be

distributed to customers which purchased refined petroleum products from Good Hope during the period August 19, 1973 through July 31, 1976.

**DATE AND ADDRESS:** Comments must be filed in duplicate on or before April 15, 1991, and they should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a prominent reference to case number LFX–0002.

**FOR FURTHER INFORMATION CONTACT:** Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2094 (Mann); 586–2383 (Klurfeld).

**SUPPLEMENTARY INFORMATION:** In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute to eligible claimants $9,000,000.00, plus accrued interest, obtained by the DOE under the terms of a compromise settlement entered into with Good Hope Refineries (Good Hope), on October 13, 1983. The funds were paid by Good Hope towards the settlement of alleged violations of the DOE's Mandatory Petroleum Price and Allocation Regulations.

The OHA has tentatively determined to distribute the Good Hope settlement funds in two stages. In the first stage, we will accept claims from identifiable purchasers of petroleum products from Good Hope who may have been injured by the alleged overcharges. The specific requirements which an applicant must meet in order to receive a refund are set out in Section III of the Proposed Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons of covered refined petroleum products which they purchased from Good Hope during the August 19, 1973 through July 31, 1976 refund period.

Any settlement funds remaining after valid claims are paid in the first stage may be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07.

Applications for Refund should not be filed at this time. Appropriate public notice will be provided prior to the acceptance of claims. Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Date: March 7, 1991.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

**Proposed Decision and Order of the Department of Energy**

*Supplemental Order*

*Name of firm:* Good Hope Refineries.
*Date of filing:* March 13, 1990.
*Case number:* LFX–0002.

On October 13, 1983, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) to distribute the funds which Good Hope Refineries (Good Hope) remitted to the DOE pursuant to a consent order between the DOE and Good Hope. In accordance with the procedural regulations codified at 10 CFR part 205, subpart V (hereinafter subpart V), the ERA requested that the OHA establish special refund procedures to remedy the effects of the alleged regulatory violations resolved by the Good Hope consent order. Good Hope remitted $1,550,000 in funds, and OHA subsequently issued a Decision and Order implementing special refund procedures. *See Good Hope Refineries,* 13 DOE ¶ 85,105 (1985). Good Hope recently remitted an additional $9,000,000 pursuant to the terms of the consent order, to which $654,002 in interest has accrued as of January 31, 1990. Pursuant to the terms of subpart V, the OHA must now take action to distribute these additional funds.

**I. Background**

From August 19, 1973 through July 31, 1976, Good Hope Industries, Inc. owned Good Hope Refineries, a crude oil refiner located in Metairie, Louisiana, and Gasland, Inc., a chain of motor gasoline stations operating in New England and the State of New York. Good Hope operated a refinery, and it sold a range of refined petroleum products covered by the Mandatory Petroleum Price and Allocation Regulations (the DOE regulations), which were issued under the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. 751 *et seq.* Good Hope was a "refiner" subject to the price regulations set forth at 10 CFR part 212, subpart E. During the period of petroleum price controls, the ERA conducted several audits of Good Hope's operations to determine its compliance with the DOE regulations. As a result of these audits, the ERA issued Notices of Probable Violation (NOPVs) alleging that Good Hope had not complied with price regulations in its refined product sales.

In order to settle all claims and disputes between Good Hope and the DOE regarding the firm's compliance with the DOE regulations during the period August 19, 1973 through July 31, 1976, Good Hope and the DOE entered into a consent order on July 31, 1979. Under the terms of the consent order, Good Hope was required to provide $15,000,000 in restitution through: (i) Price roll backs, (ii) reductions in banks of unrecouped costs, (iii) direct cash payments to the DOE. The consent order covers all petroleum-related aspects of Good Hope Industries' operations. At the time that it entered into the consent order, Good Hope was involved in bankruptcy proceedings. Good Hope provided the DOE with $1,550,000 in restitutionary funds and subsequently fell into arrears on its payments to the DOE.

Uncertain as to whether it would receive additional funds from Good Hope, the DOE instituted special refund procedures for the $1,550,000 that it had received pursuant to the consent order. *See Good Hope Refineries,* 13 DOE ¶ 85,105 (1985). The DOE received 23 applications for refund from purchasers of Good Hope's petroleum products. Of those applciations, five were granted refunds, 12 were denied, and six were dismissed due to lack of adequate supporting information.

Meanwhile, enforcement of the Good Hope consent order was referred to the Department of Justice. As part of the reorganization plan that permitted Good Hope to emerge from bankruptcy, the firm made an additional $9,000,000 in payments to DOE. The firm now does business as Transamerican Natural Gas Corporation. The Good Hope funds are available for disbursement pursuant to the consent order between the DOE and Good Hope. The funds are held in an interest-bearing escrow account at the Department of the Treasury awaiting a determination of their proper disposition.

## II. Jurisdiction and Authority

The regulations codified in subpart V establish general guidelines which the OHA may use in formulating and implementing a distribution plan for funds received as a result of an enforcement action. A more detailed treatment of subpart V and the authority of the OHA to design refund procedures may be found in *Office of Enforcement*, 9 DOE ¶ 82,508 (1981) and in *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*). This Proposed Decision and Order establishes the OHA's tentative plans to distribute the funds remitted by Good Hope.

## III. Proposed Refund Procedures

We propose to implement a two-stage refund procedure for the Good Hope consent order fund. Purchasers of refined petroleum products from Good Hope during the consent order period may file Applications for Refund in the initial stage, and any monies remaining after the payment of all valid first-stage claims will be disbursed to the state governments for indirect restitution. Our experience with subpart V refund proceedings indicates that potential claimants will consist of (1) End-users; (2) regulated entities, such as public utilities and cooperatives; (3) retailers, resellers, and refiners of petroleum products (hereinafter collectively referred to as "resellers").

### *A. Claims Based on Alleged Overcharges*

Insofar as possible, the consent order funds should be distributed to those customers of the consent order firms who were injured by the alleged price violations. The 1979 ERA audit file pertaining to the consent order lists the names of customers who purchased refined products from Good Hope, along with the pro rata amounts the ERA calculated these customers should be eligible to receive in a refund proceeding. This information is listed in the Appendix to this Decision and Order. The OHA used the audit file information to calculate refunds to eligible applicants in the first Good Hope refund proceeding, and we intend to use it in granting refunds to successful claimants in the present proceeding. However, we recognize that there may be purchasers of petroleum products from Good Hope who are not listed in the ERA audit file and who may have been injured by the pricing practices of Good Hope during the relevant time period. Good Hope customers not referred to in the audit file may file applications for refund, and their refunds will be calculated using the volumetric method outlined below.

In order to receive a refund, each claimant will be required to submit a schedule of its monthly refined petroleum product purchases from Good Hope during the August 19, 1973 to July 31, 1976 consent order period. If the petroleum products were not purchased directly from Good Hope, the claimant must establish that they originated with Good Hope. Unless a reseller claimant elects to utilize the injury presumptions described below, it will be required to submit a detailed showing that it was injured by Good Hope's alleged overcharges. The two distinct elements generally required in such an injury showing are (1) The existence of "bank" of unrecovered increased product costs by a reseller claimant in excess of the refund sought, and (2) evidence that market conditions prevented the reseller claimant from raising its prices to pass through the costs of the alleged overcharges.[1] *See Vickers Energy Corporation/Hutchens Oil Co. Inc.*, 11 DOE ¶ 85,070 at 88,105 (1983). The second element of the injury showing could be a demonstration that the company suffered a competitive disadvantage as a result of its purchases from Good Hope. *See National Helium Corporation/Atlantic Richfield Company (11 DOE ¶ 85,257 (1984), affirmed sub nom. Atlantic Richfield Company* v. *DOE*, 618 F. Supp. 1199 (D. Del. 1985).

### . *Use of Presumptions*

The use of certain presumptions permits claimants to participate in refund proceedings without incurring burdensome expenses, and aids in the efficient evaluation of refund claims. *See, e.g., Texaco Inc.*, 20 DOE ¶ 85,147 (1990). The use of presumptions in refund cases is specifically authorized by the pertinent subpart V regulations at 10 CFR 205.282(e). Accordingly, we propose to adopt the presumptions described below.

a. *Calculation of refunds.* We must determine the proper method for dividing the consent order fund among successful applicants. Although we recognize that the ERA audit files do not provide conclusive evidence as to the identity of all injured parties or the amount of money they should receive in a subpart V proceeding, we believe that this information can be useful in determining a refund which closely corresponds to the injuries experienced. *See Marion Corp.*, 12 DOE ¶ 85,014 (1984). The ERA attempted to ascertain the identities of the injured parties and the precise amount of injury incurred after the completion of all of the audits covered by the consent order. The ERA found that Good Hope's alleged overcharges affected some customers more than others who purchased comparable volumes. In light of the record estabished by the ERA, refunds for the firms listed in the Appendix will equal the refund amounts calculated by the ERA. These percentages, which are listed in the Appendix, represent a prorated portion of the alleged overcharges by Good Hope. Successful applicants will also receive a pro rata share of the interest which has accrued since the funds were deposited in the escrow account.

A refund applicant which is not listed in the appendix to this Decision may receive a refund based upon a per gallon, or volumetric, basis.[2] In the absence of other information, a volumetric refund is appropriate because the petroleum price regulations generally required a regulated company to account for increased costs on a company-wide basis in establishing its prices. Under this volumetric method, a claimant's "allocable share" of the refined product portion of the consent order fund is equal to the number of gallons of covered petroleum products which it purchased from Good Hope during the consent order (refund) period multiplied by the per gallon (volumetric) refund amount.[3] In the present refund

[1] Claimants which have previously relied upon their banked costs to obtain refunds in other refund proceedings should deduct those refunds from any cost banks submitted in this refund proceeding. *See Husky Oil Co./Metro Oil Products, Inc.*, 16 DOE ¶ 85,090 at 88,179 (1987). Additionally, a claimant attempting to show injury may not receive a refund for any month in which it has a negative accumulated cost bank (for the petroleum product) or for any prior month. *See Standard Oil Co. (Indiana)/Suburban Propane Gas Corporation*, 13 DOE ¶ 85,030 at 88,082 (1985). If a claimant no longer has records of its banked costs, the OHA may use its discretion to permit the claimant to approximate those cost banks. *See Gulf Oil Corporation/Sturdy Oil Co.*, DOE ¶ 85,187 (1986).

[2] If an individual claimant believes that it was injured by more than its volumetric share, it may elect to forego this presumption and file a refund application based upon a claim that it suffered a disproportionate share of Good Hope's alleged overcharges. *See, e.g., Mobil Oil Corporation/Marine Corps Exchange Service*, 17 DOE ¶ 85,714 (1988). Such a claim will only be granted if the claimant makes a persuasive showing that it was "overcharged" by a specific amount, and it absorbed those overcharges. *See Panhandle Eastern Pipeline Company/Western Petroleum Company*, 19 DOE ¶ 85,705 (1989). To the degree that a claimant makes this showing, it will receive an above-volumetric refund.

[3] The petroleum products sold by Good Hope which were subject to the petroleum price regulations and their respective decontrol dates are as follows:

| | |
|---|---|
| Residual Fuel Oil | June 1, 1976 |
| Diesel Fuel, No. 2 Fuel Oil, Kerosene | July 1, 1976 |

proceeding, we have computed the per gallon refund amount to be $0.0052.[4] Using this volumetric amount, a claimant would be eligible for a refund of $5,200 per one million gallons purchased.[5] In addition to this principal refund, a claimant whose application is granted in this refund proceeding will receive a pro rata share of the interest that has accrued on the Good Hope refined product pool since its deposit in the appropriate escrow account.[6]

We also propose to adopt various presumptions concerning a claimant's injury, which are listed below.[7]

b. *End-Users.* In accordance with prior subpart V refund proceedings, we propose to adopt the presumption that end-users of Good Hope petroleum products, whose businesses are unrelated to the petroleum industry, were injured by Good Hope's alleged overcharges. *See, e.g., Texas Oil and Gas Corporation,* 12 DOE ¶85,069 at 88,209 (1984) (TOGCO). Unlike the regulated companies in the petroleum industry, end-users generally were not subject to the petroleum price regulations during the refund period, and they were not required to keep records justifying selling price increases by reference to petroleum cost increases. Therefore, evaluation of the impact of the alleged overcharges on the prices of the end-users' goods and services would be beyond the scope of this refund proceeding. *See TOGCO* at 88,209. Accordingly, we propose that end-users will only be required to establish their purchase volumes of covered Good Hope petroleum products during the refund period to make a sufficient showing that they were injured by the alleged overcharges.

c. *Regulated bodies and cooperatives.* We propose that a claimant whose prices for goods and services are regulated by a governmental body (e.g., public utilities), or an agricultural cooperative, need only submit documentation of its purchases, or those of its members in the case of a cooperative, in order to receive a full volumetric refund. However, a regulated company or a cooperative will be required to certify that it will (1) Pass any refund received through to its customers or member-customers, (2) explain the manner in which it plans to provide this restitution to its customers or members, and (3) notify the appropriate regulatory or membership body of the receipt of a refund. *See Exxon* at 89,150. These requirements are based upon the presumption that a regulated firm or cooperative would have routinely passed any overcharges through to its purchasers and, therefore, should pass any refunds resulting from the alleged overcharges to its customers and member-customers, respectively. Accordingly, these firms will not be required to make a detailed demonstration of injury to receive a refund.[8]

d. *Retailers, Resellers, and refiners—*

i. *Small claims presumption.* We propose the adoption of a "small claims" presumption that a retailer, reseller, or refiner claimant which resold Good Hope petroleum products and possesses an allocable share of the refined product pool of $10,000 or less, exclusive of interest, was injured by the alleged overcharges. *See Texaco* at 88,320. Under the small claims injury presumption, such a claimant will not be required to submit evidence of injury beyond documentation of its purchase volume of covered Good Hope petroleum products. *See TOGCO* at 88,210. This presumption is based on the fact that the considerable expense which may be involved in a detailed injury showing may exceed the potential refund for many of the smaller claimants. Therefore, the absence of simplified refund procedures for small claims could deprive injured parties of their possibility of obtaining refunds. Furthermore, the use of the small claims injury presumption is desirable because it expedites the OHA's evaluation of the number of routine refund claims expected.[9]

ii. *Mid-level claims presumption.* Additionally, a retailer, reseller, or refiner claimant whose allocable share of the Good Hope refined product pool exceeds $10,000, exclusive of interest, may elect to receive either $10,000 or 40 percent of its allocable share, whichever is greater, up to $50,000, also exclusive of interest.[10] The use of this presumption reflects our belief that the mid-level claimants were likely to have experienced some injury as a result of Good Hope's alleged overcharges. *See Total Petroleum, Inc.,* 17 DOE ¶ 85,542 at 89,050 (1988). In some prior refund proceedings, we have determined product-specific levels of injury through detailed evaluations. *See, e.g., Getty Oil Company,* 15 DOE ¶ 85,064 (1986). However, in *Gulf Oil Corporation,* 16 DOE ¶ 85,381 at 88,737 (1987) (*Gulf*), we determined that it was better to adopt a single presumptive level of injury for all mid-level claimants of 40 percent for all covered petroleum products which they purchased.

We believe that the method used in the *Gulf* determination is sound and, accordingly, we propose to adopt, in the present refund proceeding, a 40 percent presumptive level of injury for all mid-level claimants in all of their covered purchases. A claimant seeking a refund under the mid-level injury presumption will only be required to establish its purchase volume of covered Good Hope petroleum products to be eligible for a refund of $10,000 or 40 percent of its

[4] We obtained the per gallon refund figure by dividing the Good Hope consent order fund ($9,000,000) by the approximate volume of refined petroleum products sold by Good Hope between the beginning of the refund period (August 19, 1973) and the dates of decontrol for the relevant products (1,699,975,030 gallons).

[5] Any applicant which establishes that it would receive a greater refund under the volumetric method than it would using the percentages in the Appendix shall be entitled to the larger refund. *See Marion Corp.,* 12 DOE ¶ 85,014 (1984).

[6] A purchaser of Good Hope products who did not submit a refund application prior to October 1, 1985, the initial filing deadline in the Good Hope refund proceeding, may, based on the total funds remaining in the Good Hoppe escrow account, nevertheless be eligible to receive a full volumetric or allocable share of the consent order fund from the funds now available.

[7] As in prior cases, we propose to establish a minimum principal refund amount of $15. In this determination, any potential claimant purchasing less than 2,885 gallons of petroleum products from Good Hope would have an allocable share of less than $15. We have found that the cost of processing claims in which refunds of less than $15 are sought outweighs the restitutionary benefits in those instances. *See Exxon Corporation,* 17 DOE ¶85,590 at 89,150 (1988) (*Exxon*).

[8] A cooperative's purchases of Good Hope petroleum products which were subsequently resold to non-members will be treated in a manner consistent with purchases made by other resellers. *See Total Petroleum, Inc./Farmers Petroleum Cooperative, Inc.,* 19 DOE ¶85,215 (1989).

[9] In order to be considered under the small claims injury presumption, a retailer, reseller, or refiner applicant must have purchased less than 1,923,077 gallons of Good Hope petroleum products during the refund period or claim a refund of .1111% or less based on information from the ERA audit file.

[10] Under the mid-level injury presumption, a claimant which purchased between 1,923,077 gallons and 4,807,692 gallons of Good Hope petroleum products would be eligible to receive a principal (exclusive of interest) refund of $10,000. Similarly, a claimant who, according to the audit file, is eligible to receive between .1111% and .2777% of the alleged overcharges will be eligible to receive a principal refund of $10,000. A claimant purchasing between 4,807,692 gallons and 24,038,462 gallons of petroleum products would be eligible for a principal refund equal to 40 percent of its allocable share, and an applicant with a purchase volume in excess of 24,038,462 gallons would be eligible for a principal refund of $50,000. Moreover, a claimant entitled to receive between .2777% and 1.3888% of the alleged overcharges would be eligible to receive a principal refund equal to 40 percent of its allocable share, and an applicant whose share according to the audit file exceeds 1.3888% would be eligible for a principal refund of $50,000.

allocable share, whichever is greater, up to $50,000.[11]

iii. *Spot purchasers.* We propose to adopt a rebuttable presumption that a retailer, reseller, or refiner claimant which only made spot purchases from Good Hope did not sustain injury as a result of those purchases. As we have stated in prior Decisions, spot purchasers generally had considerable discretion in the timing and location of their purchases and, therefore, would not have made the purchases at increased prices unless they were able to pass through the full amount of their supplier's selling price to their downstream customers. *See, e.g., Vickers* at 85,396–7. Accordingly, a spot purchaser applicant must submit specific and detailed evidence to rebut the spot purchaser presumption of non-injury and to establish the degree to which it was injured in its spot purchases from Good Hope.[12]

*B. Allocation Claims*

We may also receive claims based upon Good Hope's alleged failure to supply petroleum products that it was obligated to supply under the DOE allocation regulations. 10 CFR part 211. Any such applications will be evaluated with reference to the standards established in subpart V implementation cases such z as *Office of Special Counsel,* 10 DOE ¶ 85,048 at 88,220 (1982), and in specific refund cases such as *Mobil Oil Corporation/Aromalene Oil Company,* 20 DOE ¶ 85,155 (1990); *Mobil Oil Corporation/Reynolds Industries, Inc.,* 17 DOE ¶ 85,608 (1988). These standards generally require an allocation claimant to demonstrate (1) The existence of a supplier/purchaser relationship with the consent order firm, (2) the likelihood that the consent order firm violated the DOE allocation regulations by not supplying the claimant with petroleum products as required by 10 CFR part 211, (3) a contemporaneous complaint to the DOE, or other evidence that the claimant contemporaneously sought redress, with respect to the alleged allocation violation, and (4) the occurrence and degree of injury that it sustanined as a result of this alleged violation.

In evaluating whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible concerning the DOE's treatment of any contemporaneous complaints made by the claimant. We will also look at any defenses to the alleged allocation violation by Good Hope. *See Marathon Petroleum Company/Research Fuels, Inc.,* 19 DOE ¶ 85,575 (1989), *action for review pending,* No. CA3–89–2983G (N.D. Tex. filed November 22, 1989). In evaluating a claimant's injury from an alleged allocation violation, we will consider the effect of the alleged violation on its entire business operation, with particular attention to the volume of petroleum products which it received from suppliers other than Good Hope. In determining the amount of any allocation refund, we will use any available information regarding the portion of the Good Hope consent order fund that the DOE, and its predecessors, generally attributed to alleged allocation violations and to the specific allocation violation alleged by the claimant. Finally, since the Good Hope consent order is the result of a negotiated settlement of the issues identified in the enforcement proceedings against Good Hope and the amount of the consent order is less than Good Hope's potential liability in those proceedings, we will prorate allocation refunds which would otherwise be disproportionately large in relation to the consent order fund.

*C. Distribution of Funds Remaining After the First Stage*

We propose that any funds remaining in the refined product pool of the Good Hope consent order fund after the payment of all valid first-stage claims be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07. PODRA requires that the Secretary of Energy annually determine the amount of oil overcharge funds that will not be needed to pay the claims of injured parties in subpart V refund proceedings and make those funds available to state governments for use in four energy conservation programs specified in the statute.[13] The Secretary has delegated these duties to the OHA, and any funds in the Good Hope refined product pool that the OHA determines will not be required for direct restitution to injured customers will be distributed in accordance with the procedures established in PODRA.

*It is therefore ordered that*

The refund amounts remitted to the Department of Energy by Good Hope Refineries, pursuant to Consent Order No. 150S001542, shall be distributed in accordance with the foregoing Decision.

[11] If a claimant attempts to make a detailed injury showing for the purpose of obtaining 100 percent of its allocable share but, instead, submits evidence leading us to conclude that it passed through all of the alleged overcharges, or would be eligible for a refund of less than the appropriate presumptive injury level, it may not then be eligible for a refund under an injury presumption. Such a claimant would be granted a refund reflecting the level of injury exhibited in its injury showing. No refund will be granted if its submission shows that it was not injured in its purchases from Good Hope. *See Exxon* at 89,150 n. 10.

[12] In other refund proceedings, we have stated that spot purchaser applicants wishing to rebut the spot purchaser presumption should demonstrate that they made the spot purchases in order to fulfill obligations to their base period customers and resold the petroleum products at a loss. *See, e.g., Fletcher Oil & Refining,* 20 DOE ¶ 85,513 (1990), *Texaco, Inc.,* 20 DOE ¶ 85,147 (1990).

[13] Due to the small number of refunds which were granted in the first Good Hope special refund proceeding, the OHA has already taken action to allocate $2,361,124 ($2,250,000 in principal plus $111,124 in interest) to the state governments pursuant to the provisions of PODRA.

APPENDIX

| Customer listed in audit file | Share of alleged overcharges (in percents) |
|---|---|
| Standard Oil Company (Ohio), 20600 Chagrin Blvd., Cleveland, OH 44122 | 4.6370 |
| Coastal States Marketing, Inc., 9 Greenway Plaza, Houston, TX 77046 | 0.1555 |
| Stillings Petroleum Corporation, P.O. Box 700328, Tulsa, OK 74170 | 0.2923 |
| Conoco, P.O. Box 3407, Houston, TX 77252 | 5.2449 |
| Allied Oil, P.O. Box 6479, Cleveland, OH 44101 | 3.2721 |
| Texaco, Incorporated, 2000 Westchester Avenue, White Plains, NY 10650 | 4.0074 |
| Wanda Petroleum, 2 Houston Center, Houston, TX 77052 | 0.0560 |
| Charter International Oil Co., P.O. Box 5008, Houston, TX 77012 | 1.3055 |
| Consolidated Edison, 4 Irving Place, New York, NY 10003 | 6.9986 |
| Cities Service Oil Company, P.O. Box 300, Tulsa, OK 74102 | 1.3287 |

APPENDIX—Continued

| Customer listed in audit file | Share of alleged overcharges (in percents) |
|---|---|
| Union Oil of California, 461 S. Boylston Street, Los Angeles, CA 90017 | 0.8182 |
| Texas Olefins, 2 Park West Plaza, Baytown, TX 77520 | 1.0336 |
| Coral Petroleum, 908 Town & Country Road, Houston, TX 77224 | 3.0205 |
| Exxon Corporation, P.O. Box 4385, Houston, TX 77001 | 2.0854 |
| Saber Petroleum, 1400 Smith Street, Suite 1700, Houston, TX 77002 | 3.8686 |
| Apex Oil Company, 7930 Clayton Road, St. Louis, MO 63117 | 8.0581 |
| Thomas Reidy, 1100 Milam Street, Suite 2170, Houston, TX 77002 | 2.0221 |
| Systems Fuels, P.O. Box 6000, New Orleans, LA 70161 | 4.1186 |
| Tauber Oil Company, P.O. Box 4645, Houston, TX 77210 | 3.8785 |
| Amoco, 200 E. Randolph Drive, Chicago, IL 60601 | 17.8650 |
| L&L Oil Company, Rt. 1, Box 367, Crown Point, LA 70072 | 0.0182 |
| Ashland Petroleum, P.O. Box 391, Ashland, KY 41114 | 2.6550 |
| Amerada Hess, 1185 Avenue of the Americas, New York, NY 10036 | 0.2985 |
| Union Texas Petroleum, 2502 Chimney Rock, Houston, TX 77252 | 0.0839 |
| Sun Oil, 100 Matonsford Road, Radnor, PA 19087 | 0.4633 |
| Don Love, P.O. Box 262507, Houston, TX 77207 | 0.0108 |
| Marathon Oil, 539 South Main Street, Findlay, OH 45840 | 2.0872 |
| Gulf Oil, P.O. Box 1524, Houston, TX 77001 | 3.2329 |
| Allied Chemical, P.O. Box 1139R, Morristown, NJ | 0.0778 |
| Bulk Oil, USA, Inc., 425 Park Avenue, New York, NY 10025 | 1.5209 |
| Agway, 333 Butternut Drive, DeWitt, NY 03214 | 0.3691 |
| Triangle Refining Company, P.O. Box 3367, Houston, TX 77253 | 0.0862 |
| Northwell Industries Corporation, 35 Pine Lawn Road, Melville, NY 11747 | 0.4221 |
| Kerr-McGee, Kerr-McGee Center, Oklahoma City, OK 73125 | 0.0417 |
| Tenneco Oil, P.O. Box 2511, Houston, TX 77002 | 0.0823 |
| Bray Terminals, P.O. Box 174, Marcy, NY 13403 | 0.1592 |
| Toro Petroleum Corporation, Houston, TX | 0.1965 |
| Howard Oil, Maspeth, NY | 1.9837 |
| Texas City Refineries, Box 1271, Texas City, Texas | 1.0336 |
| Frank's Fuel | 0.5594 |
| Petroleum Heat and Power | 2.0776 |
| International Trading Limited, 312 St. Charles Avenue, New Orleans, LA | 0.3409 |
| Patchogue Oil, 1185 Avenue of the Americas, New York, NY | 0.5416 |
| Baysett Transportation, Birmingham, AL | 0.0069 |
| Hol Petroleum, New York, NY | 0.0018 |
| Point Landing Fuel, Harahan, LA | 0.2034 |
| Val-Cap, Incorporated, P.O. Box 58069, Houston, TX | 0.1456 |
| HiOctane Terminal Company, Panama City, FL | 0.1543 |
| Gulf Coast Service Station, Westwego, LA | 0.0568 |
| Texas Star Oil Company, P.O. Box 151, Corpus Christi, TX | 0.0398 |
| Pel-State Oil | 0.0080 |
| Koziol, Ware, MA | 0.0013 |
| Stafford | 0.0032 |
| Autotronic Systems, Houston, TX | 0.0030 |
| Timbros Service Stations, Middletown, CT | 0.0127 |
| Gasland, Inc. retail sales | 6.6009 |
| Total | 100.0000 |

[FR Doc. 91-6106 Filed 3-13-91; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-180843; FRL 3883-6]

### Receipt of Application for Emergency Exemption to use Benomyl; Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received a specific exemption request from the North Dakota Department of Agriculture (hereafter referred to as the "Applicant") for use of the pesticide benomyl (CAS 17804-35 2) to control Sclerotinia stem rot on up to 10,000 acres of canola in North Dakota. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

**DATES:** Comments must be received on or before March 29, 1991.

**ADDRESSES:** Three copies of written comments, bearing the identification notation "OPP-180843," should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, 1921

Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Susan Stanton, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–4360).

**SUPPLEMENTARY INFORMATION:** Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of the fungicide, benomyl, available as Benlate DF (EPA Reg. No. 352–447) from E. I. du Pont de Nemours Co., to control Sclerotinia stem rot, caused by *Sclerotinia sclerotiorum*, on up to 10,000 acres of canola in North Dakota. Information in accordance with 40 CFR Part 166 was submitted as part of this request.

According to the Applicant, Sclerotinia has a broad host range, including crops such as sunflower and dry edible beans, which are commonly grown in rotation with canola. The fungus produces hard resting structures, sclerotia, that live from four to six years in the soil. Short rotations of susceptible crops have resulted in a buildup of Sclerotinia in the soil, which can result in a severe stem rot outbreak if weather during the two weeks prior to flowering (usually the last two weeks of June) is cool and wet. Under these conditions, the sclerotia germinate, producing small mushroom-like fruiting bodies, known as apothecia, that release millions of airborne spores, which infect the canola blossoms. According to the Applicant, there are no pesticides currently registered for the control of Sclerotinia stem rot on canola in the United States, and without an effective control, yield losses of fifteen to twenty percent could result if stem rot outbreaks occur this season. The potential dollar loss without benomyl during the 1990 season is estimated to be between $112,000 and $300,000.

A single aerial application of benomyl will be applied at a maximum rate of 0.75 pounds of active ingredient per acre in at least 5 gallons of water per acre. A maximum of 7,500 pounds of active ingredient may be needed to treat a maximum of 10,000 acres. Applications will be completed by July 15, 1991.

Benomyl was referred to Special Review in December of 1977 because of its mutagenic, teratogenic, spermatogenic, and acute aquatic effects. The Special Review process was completed on October 20, 1982, and the decision was made to require use of either cloth or commercially available disposable dust masks by mixer/loaders of benomyl intended for aerial application and to require that registrants of benomyl products conduct field monitoring studies to identify residues that may enter aquatic sites after use on rice. Registrants completed the field monitoring study and submitted it to the Agency in November of 1984. The study was determined to be inadequate and a new study was required by the Registration Standard issued in June of 1987.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing use of a pesticide which contains an active ingredient which has been the subject of a Special Review and is intended for a use that could pose a risk similar to the risk posed by any use of a pesticide which is or has been the subject of a Special Review [40 CFR 166.24 (a)(5)].

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the North Dakota Department of Agriculture.

Dated: March 5, 1991.

**Anne E. Lindsay,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 91–6099 Filed 3–13–91; 8:45 am]
**BILLING CODE 6560–50–F**

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**[OPP–36180; FRL 3879–8]**

## Endangered Species Protection Program May Affect Determinations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This Notice announces that EPA has completed its "may affect" determination on 31 pesticides for all registered uses, on all U.S. listed threatened or endangered species. EPA will forward a request to the U.S. Fish and Wildlife Service (FWS) of the Department of the Interior, for a formal consultation under section 7 of the Endangered Species Act (ESA), 30 days from the date of this Notice.

**ADDRESS:** The supporting material for EPA's "may affect" determination will be available for public review at the following address: U.S. Environmental Protection Agency, Rm. 246, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557–2805.

**FOR FURTHER INFORMATION CONTACT:** By mail: Larry Turner, Ecological Effects Branch, Environmental Fate and Effects Division (H7507–C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. (703–557–1007).

**SUPPLEMENTARY INFORMATION:** EPA is responsible for regulating the registration and use of pesticides. Under the ESA, EPA is required to consult with FWS on actions that it determines may affect a federally listed threatened or endangered species. A Biological Opinion from FWS is the result of this consultation process and will indicate if the registered uses of these pesticides may require limitations on use to avoid jeopardy and reduce the likelihood of incidental take of listed species. Pesticides and uses included in this consultation were selected in accordance with the species-based approach to consultation as stated in the **Federal Register** Notice, published on July 3, 1989, (54 FR 27984), on the proposed Endangered Species Protection Program. "May affect" determinations for groups of species apply only to those species that are actually exposed to the particular pesticide. Following is the list of pesticides and a brief summary of the assessment for which a consultation is requested:

*Acephate.* May affect many exposed listed aquatic invertebrates and some birds for most uses and label rates.

*Aldicarb.* May affect all exposed listed terrestrial and aquatic animals at all label rates.

*Aluminum phosphide.* Use to control rodents may affect many exposed listed terrestrial animals using burrows.

*Azinphos methyl.* May affect many exposed listed terrestrial animals and all exposed listed aquatic species for most uses and label rates.

*Bendiocarb.* May affect all exposed listed aquatic species and some exposed birds and mammals for many uses.

*Brodifacoum.* Use to control rodents may affect some exposed listed mammals and one exposed listed bird.

*Bromadiolone.* May affect some exposed listed mammals from use to control rodents.

*Bromethalin.* May affect some exposed listed mammals from use to control rodents.

*Carbofuran.* May affect all exposed listed terrestrial vertebrates and insects and many exposed listed aquatic species for all uses.

*Chlorophacinone.* Use to control rodents may affect a few exposed listed aquatic species from one use and many listed mammals.

*Chlorpyrifos.* May affect many exposed listed birds and some exposed listed mammals from most uses at certain label rates and all exposed listed aquatic species for all uses.

*Diphacinone.* Use to control rodents may affect some exposed listed mammals.

*Endosulfan.* May affect many exposed listed birds, and some exposed listed mammals, and some exposed listed aquatic invertebrates for some label rates and all uses, and May affect all exposed listed fish for all uses and label rates.

*Fenthion.* May affect most exposed listed birds and aquatic species and some exposed listed mammals for many uses.

*Fenvalerate and s-fenvalerate.* May affect all exposed listed aquatic species from all uses and nearly all label rates.

*Magnesium phosphide.* Use to control rodents may affect many exposed listed terrestrial animals using burrows.

*Methyl bromide.* Not expected to affect exposed listed species.

*Naled.* May affect some exposed listed birds from certain uses and label rates and all exposed listed aquatic species from all uses.

*Parathion.* May affect nearly all exposed listed aquatic and terrestrial animals from most uses and label rates.

*Permethrin.* May affect all exposed listed fish and aquatic arthropods from all uses and freshwater mollusks at certain label rates.

*Phorate.* May affect all exposed listed aquatic species from all uses, and many exposed listed birds and mammals from certain uses.

*Pival.* Use to control rodents may affect some exposed listed mammals.

*Potassium nitrate.* Use to control rodents may affect listed terrestrial vertebrates that use burrows from use to control rodents.

*Sodium cyanide.* Use to control predators may affect some exposed listed mammals.

*Sodium fluroacetate.* Not expected to affect exposed listed species from use as toxic collar on sheep.

*Sodium nitrate.* Use to control rodents may affect exposed listed terrestrial vertebrates that use burrows. use to control rodents.

*Terbufos.* May affect all exposed listed aquatic species and most exposed listed birds and mammals for all uses.

*Trifluralin.* May affect all exposed listed aquatic species when aerially applied, or fish at certain label rates for ground applications or exposed listed plant species from all uses and rates.

*Vitamin D-3.* Use to control rodents may affect some exposed listed mammals.

*Warfarin.* Use to control rodents may affect some exposed listed mammals.

*Zinc phosphide.* Use to control rodents may affect some exposed listed terrestrial vertebrates.

The supporting material for the "may affect" determinations will be available for public inspection in Rm. 246 at the Virginia address previously listed in this document.

Dated: February 27, 1991.

**Anne L. Barton,**

*Director, Environmental Fate and Effects Division, Office of Pesticide Programs.*

[FR Doc. 91-6098 Filed 3-13-91; 8:45 am]
BILLING CODE 6560-50-F

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### Privacy Act of 1974; Publication of Systems of Records, Proposed New Systems and Proposed New Routine Uses

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Notice; publication of revised systems of records, proposed new routine uses and elimination of four systems of records.

**SUMMARY:** This notice provides an accurate and complete text, with administrative changes, of the Equal Employment Opportunity Commission's notices for its internal and Governmentwide systems of records. This notice also proposes four new systems of records, eliminates three systems of records that are no longer used by EEOC, consolidates two systems into one and proposes new routine uses for identified systems of records. This action effects the administrative changes and makes readily available in one issue of the **Federal Register** an accurate and complete text of the notices for use by individuals and by agency Privacy Act officers.

**DATES:** The notices with the administrative (non-substantive) changes are effective on March 14, 1991. The proposed routine uses and systems will become effective, without further notice, on May 13, 1991 unless comments dictate otherwise.

**ADDRESSES:** Written comments may be sent to the Office of Executive Secretariat, Equal Employment Opportunity Commission, Room 10402, 1801 L Street, NW., Washington, DC 20507.

Copies of this notice are available in the following alternate formats: large print, braille, electronic file on computer disk, and audio-tape. Copies may be obtained from the Office of Equal Employment Opportunity by calling (202) (202) 663-4395 (voice) or 663-4399 (TDD).

**FOR FURTHER INFORMATION CONTACT:** Nicholas M. Inzeo, Acting Associate Legal Counsel, Thomas J. Schlageter, Acting Assistant Legal Counsel or Kathleen Oram, Senior Attorney (202) 663-4670 (voice) or (202) 663-7026 (TDD).

**SUPPLEMENTARY INFORMATION:** The Equal Employment Opportunity Commission last completely published systems of records in 1982. Since that publication, the Commission has made both substantive and non-substantive changes to its systems and added an EEOC system (EEOC-10, Commission Claims Collection Records) in 1985. In addition, the Commission's headquarters has moved to a new building. To have a complete and accurate copy of the Commission's systems of records, a user has been required to refer to several **Federal Register** notices. The Commission is publishing the complete text of all of its systems notices to provide a current, easily accessible copy.

The proposed changes in this notice result from: (1) Editorial changes to the existing systems notices to simplify and clarify; (2) the deletion of three systems of records (EEOC-9 Labor-Management Negotiated Agreements, EEOC-11 Correspondence File, and EEOC-13 Employee Performance Effectiveness and Evaluation System); (3) the consolidation of two systems into one system (EEOC-4 Commissioners' Biographical File and EEOC-12 Official Biographical File are consolidated into EEOC-4 Biographical Files); (4) the addition of four new systems of records (EEOC-11 Records of Adverse Actions Against Nonpreference Eligibles in the

Excepted Service, EEOC–12 Telephone Call Detail Records, EEOC–13 Employee Identification Cards and EEOC–14 Employee Parking Records); (5) the renumbering of two other systems; and (6) the addition of a limited number of routine uses.

A brief description of the major changes follows:

**EEOC–1, Age and Equal Pay Act Discrimination Case Files.** The system location, system manager, storage and safeguards were amended to reflect current offices and the Commission's computerized Charge Data System. Routine use "e" regarding disclosing to appropriate authorities if EEOC becomes aware of a violation of law is proposed. Routine use "f" regarding disclosure when the government is in litigation or in response to a subpoena is also proposed. These routine uses are also being added to: (1) EEOC–3, Title VII and Americans With Disabilities Act Discrimination Case Files, as routine uses "e" and "f" respectively; (2) EEOC–7, Employee Pay and Leave Records, as routine uses "e" and "j" respectively; and (3) EEOC–8, Employee Travel and Reimbursement Records as routine uses "a" and "f" respectively. The proposed litigation and subpoena routine use is also being added to EEOC–5, Correspondence and Congressional Inquiries, as routine use "b," and EEOC–9, Claims Collection Records, as routine use "k." The new proposed routine uses meet the compatibility criteria since the information involved is collected for the purpose of the applicable routine uses. We anticipate that any disclosures will not result in any unwarranted adverse effects on personal privacy. Two routine uses, "c" and "e", were eliminated as unnecessary.

**EEOC–2, Attorney Referral List.** The authority for maintenance of the system and the retention and disposal section was amended.

**EEOC–3, Title VII and Americans With Disabilities Act Discrimination Act Case Files.** The title, categories of individuals covered by the section and authority for maintenance of the system were amended to include charges filed under the Americans With Disabilities Act of 1990, signed into law on July 26, 1990. Public Law 101–336. The law provides that EEOC shall begin accepting charges of employment discrimination from individuals with disabilities on July 26, 1992. In addition to the two new proposed routine uses noted above, the system location, system manager, storage and safeguards sections were changed to reflect current offices and the Commission's computerized Charge Data System.

**EEOC–4, Biographical Files.** This system was created from two previous systems, EEOC–4, Biographical Files, and EEOC–12, Officials' Biographical File–EEOC. The two systems were consolidated into one. The system location and system manager were changed to reflect the current office and title. The authority for maintenance of the system was amended and a routine use was eliminated.

**EEOC–5, Correspondence and Congressional Inquiries.** In addition to the new proposed routine use noted above, the system location and system manager were changed to reflect the current office and title. The categories of records was amended to include a computer tracking system and the authority for maintenance of the system was amended. The storage, retrievability, safeguards and retention and disposal sections have been changed to reflect current practice.

**EEOC–6, Employee Assistance Program Records.** This system (currently in effect and entitled Employee Alcoholism and Drug Abuse Records) was revised to contain information regarding EEOC employees who participate in EEOC's Employee Assistance Program, which provides for identification and referral of employees for treatment of and counseling regarding alcohol, drug, emotional or other personal problems. The system location and system manager were changed to reflect the current offices and titles. The authority for maintenance of the system was amended. New routine use "a" is proposed to permit disclosure to authorized personnel of a contractor that administers the program. The new proposed routine use meets the compatibility criteria since the information is collected for the purpose of the routine use. A routine use was eliminated. The safeguards and retention and disposal sections were amended to reflect current practice.

**EEOC–7, Employee Pay and Leave Records.** The authority for maintenance of the system was amended. In addition to the two new proposed routine uses noted above, routine use "f" regarding disclosure to the federal or District of Columbia government in connection with administrative purposes noted is proposed. Routine use "g" regarding disclosure to hearing examiners and arbitrators, among others, is also proposed. Routine uses "h" and "i" are proposed to allow disclosure to the Office of Personnel Management and the General Services Administration in connection with their responsibilities. The four new proposed routine uses mentioned directly above are also proposed for EEOC–8, Employee Travel and Reimbursement Records, as routine uses "b," "c," "d," and "e," respectively. The new proposed routine use allowing disclosure to hearing examiners and others is also proposed for EEOC–9, Claims Collection Records, as routine use "l". These new proposed routine uses meet the compatibility criteria since the information in the systems is collected for the purposes of the proposed routine uses. We do not anticipate that any disclosures will result in any unwarranted adverse effects on personal privacy. The storage, retrievability, safeguards and retention and disposal sections have been revised to reflect current practice.

**EEOC–8, Employee Travel and Reimbursement Records.** The system location has been changed, and the authority for maintenance of the system has been amended. In addition to the six new routine uses noted above, routine use "g" regarding disclosure to a congressional office in response to the individual's own inquiry is proposed. This routine use meets the compatibility criteria and we do not believe that disclosures under it will result in any unwarranted adverse effects on personal privacy. The storage and retention and disposal sections have been changed to reflect current practice; the system manager has been changed to reflect the current title.

**EEOC–9, Labor-Management Negotiated Agreements—EEOC.** This system has been deleted because the records no longer exist and the system is no longer required.

**EEOC–10, Claims Collection Records.** This system has been renumbered EEOC–9. In addition to two proposed new routine uses noted above, current routine uses "i" and "j" have been consolidated into proposed new routine use "i" regarding disclosure to the federal or District of Columbia government in connection with administrative purposes noted. Current routine use "b" has been deleted. The system location and system manager have been changed to reflect current information.

**EEOC–11, Correspondence File.** This system has been deleted because the records no longer exist and the system is no longer required.

**EEOC–12, Officials' Biographical File—EEOC.** This system has been deleted because the records are collected and maintained under EEOC–4, Biographical Files. This system is no longer required.

**EEOC–13, Employee Performance, Effectiveness and Evaluation System.**

This system has been deleted because the records no longer exist and the system is no longer required.

**EEOC–14, Grievance Records.** This system has been renumbered EEOC–10. The system location and system manager have been changed to reflect current information. The authority for maintenance of the system has been amended. Two routine uses have been amended. Routine use "d" is amended to include disclosure in order to comply with the issuance of a subpoena. Routine use "f" is amended to allow disclosure to hearing examiners, arbitrators and others; the current routine use (routine use "h") provides for disclosure to officials of the MSPB, the FLRA and the Office of Personnel Management. These amendments to the routine uses are not major changes that effect the compatibility criteria. Two routine uses were deleted.

**EEOC–11, Records of Adverse Actions Against Nonpreference Eligibles in the Excepted Service.** EEOC provides adverse action rights to nonpreference eligibles in the excepted service that are not provided in the Civil Service Reform Act. This proposed new system of records contains those records on the processing of adverse actions against nonpreference eligibles in the excepted service that are not covered by OPM's system of adverse action records, OPM/GOVT–3. Eight routine uses are proposed for the system; the proposed routine uses track those in the Office of Personnel Management's governmentwide system for adverse action and performance-based action records of all other employees.

**EEOC–12, Telephone Call Detail Records.** This proposed new system of records contains records relating to the use of EEOC telephones to place long distance calls, records indicating the assignment of telephone numbers to employees and records relating to the location of telephones in the Commission. The system was created when the EEOC acquired a new computerized telephone system at its new headquarters office building. Seven routine uses are proposed for the new system.

**EEOC–13, Employee Identification Cards.** This proposed new systems of records contains identification cards that include an employee's name, signature, social security number, date of issue and photograph and a list of all employees who have current identification cards. In addition, for employees at headquarters, the system contains numbered proximity cards and a list of all employees who have such cards, their assigned numbers, the doors controlled by the proximity cards and the employees permitted access through each door. The proximity cards permit employees to enter the headquarters building and their offices during evenings and weekends. Five routine uses are proposed for the new system.

**EEOC–14, Employee Parking Records.** This proposed new system of records contains application for parking space forms and addendum forms for individuals in car pools that include employees' names, offices, home addresses and telephone numbers, office telephone numbers, descriptions of vehicles, signatures and dates and list of employees with assigned space. The records are maintained as a result of the EEOC's move to a new building in which the parking garage has spots for EEOC employees. Four routine uses are proposed for the new system.

The proposed routine uses for the four proposed new systems of records noted above meet the compatibility criteria since the information involved is collected for the purpose of the applicable routine uses. We anticipate that any disclosure pursuant to these routine uses will not result in any unwarranted adverse effects on personal privacy.

**EEOC/GOVT–1, Equal Employment Opportunity in the Federal Government Complaint and Appeal Records.** It is proposed to exempt this system of records from certain provisions of the Privacy Act in accordance with section (k)(2) of the Act. 5 U.S.C. 552a(k)(2). This is a major change and is also being proposed in EEOC's notice of proposed rulemaking containing amendments to its Privacy Act regulations found at 29 CFR part 1611. That notice of proposed rulemaking is published in the Proposed Rules section of this **Federal Register.** Routine use "d" regarding disclosing information to administrative judges, arbitrators or others engaged in investigation or settlement of a matter is proposed. Eight routine uses have been deleted. The authority for maintenance of the system and the storage section have been amended.

A complete list of all EEOC systems of records is published below. The complete text of the notices follows.

For the Commission.

**Evan J. Kemp, Jr.,**

*Chairman.*

**EEOC Systems of Records**

EEOC–1 Age and Equal Pay Act Discrimination Case Files.
EEOC–2 Attorney Referral List.
EEOC–3 Title VII and Americans With Disabilities Act Discrimination Case Files.
EEOC–4 Biographical Files.
EEOC–5 Correspondence and Congressional Inquiries.
EEOC–6 Employee Assistance Program Records.
EEOC–7 Employee Pay and Leave Records.
EEOC–8 Employee Travel and Reimbursement Records.
EEOC–9 Claims Collection Records.
EEOC–10 Grievance Records.
EEOC–11 Records of Adverse Actions Against Nonpreference Eligibles in the Excepted Service.
EEOC–12 Telephone Call Detail Records.
EEOC–13 Employee Identification Cards.
EEOC–14 Employee Parking Records.
EEOC–GOVT–1 Equal Employment Opportunity in the Federal Government Complaint and Appeal Records.

**EEOC–1**

**SYSTEM NAME:**

Age and Equal Pay Act Discrimination Case Files.

**SYSTEM LOCATION:**

Field Office where the charge or complaint of discrimination was filed (see appendix A).

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Persons other than federal employees and applicants who file charges or complaints with EEOC alleging that an employer, employment agency or labor organization has violated the Age Discrimination in Employment Act of 1967 or the Equal Pay Act of 1963.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

This system contains the records compiled during the investigation of age and equal pay discrimination cases. These records include:

a. Documents submitted by charging party or complainant such as charge of discrimination, personal interview statement, and correspondence.

b. Documents submitted by employer such as statement of position, correspondence, statements of witnesses, documentary evidence such as personnel files, records of earnings, employee benefit plans, seniority list, job titles and descriptions, applicant data, organizational charts, collective bargaining agreements, petition to revoke or modify subpoena.

c. Records gathered and generated by EEOC in the course of its investigation such as letters of referral to state fair employment practices agencies, correspondence with state fair employment practices agencies, witness statements, investigator's notes, investigative plan, report of initial and exit interview, investigator's analyses of evidence and charge, subpoenas, decisions and letters of determination, conciliation agreements, correspondence

and any additional evidence gathered during the course of the investigation.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301; 29 U.S.C. 209, 211, 216, 217, 625; 44 U.S.C. 3101.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

These records and information in these records may be used:

a. To disclose pertinent information to a federal, state, or local agency or third party as may be appropriate or necessary to perform the Commission's functions under the Age Discrimination in Employment Act of Equal Pay Act.

b. To disclose information contained in these records to state and local agencies administering state or local fair employment practices laws.

c. To disclose non-confidential and non-privileged information from closed ADEA/EPA case files (a file is closed when the Commission has terminated its investigation and has decided not to sue) to the employer where a lawsuit has been filed against the employer involving that information, to other employees of the same employer who have been notified by the Commission of their right under 29 U.S.C. 216 to file a lawsuit on their own behalf, and their represenatives.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of a party to the charge.

e. To disclose pertinent information to the appropriate federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where the EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

f. To disclose information to another federal agency, to a court or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

These records are maintained in file folders and in computer processable storage media.

**RETRIEVABILITY:**

These records are cross-indexed by charging party name, employer name and charge number. The records may be retrieved by any of the above three indexes.

**SAFEGUARDS:**

Paper records are maintained in a secured area to which only authorized personnel have access. Access to and use of these records is limited to those persons whose official duties require such access. The premises are locked when authorized personnel are not on duty. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

**RETENTION AND DISPOSAL:**

Cases that are dismissed or closed for other than no cause are destroyed six months following the date of dismissal or closure. No cause files that are of value in the development of future class action or pattern and practice cases are retired to the Federal Records Center one year after the date of the last action and destroyed after three additional years. All other no cause files are destroyed one year after the date of the last action. Negotiated settlement files are destroyed one year after the calendar year in which the settlement agreement is signed or after all obligations under the agreement are satisfied, whichever occurs later. Where monetary benefits are realized in concurrent Age, Equal Pay, and Title VII cases, the file is destroyed three years after the date of the last action. Other files are retired to the Federal Records Center one year after the date of the last action, including action in the federal courts or the last compliance review (the final report submitted by the respondent after conciliation to indicate compliance) and destroyed after three additional years, except landmark cases. Landmark cases are transferred to the nearest Federal Records Center two years after final court action and offered to the National Archives ten years after final court action.

**SYSTEM MANAGERS AND ADDRESS:**

Director of the field office where the charge was filed (see Appendix A).

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

This system is exempt under 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Act.

**EEOC–2**

**SYSTEM NAME:**

Attorney Referral List.

**SYSTEM LOCATION:**

All District Offices (see Appendix A).

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Attorneys who represent plaintiffs in employment discrimination litigation.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

This system contains attorneys' names, business addresses and telephone numbers, the nature and amount of civil rights litigation experience, state and federal bar admission, whether the attorneys have the capacity and desire to handle class actions; whether the attorneys charge consultation fees (and how much); whether the attorneys will waive the consultation fee; the types of fee arrangements the attorneys will accept, and whether the attorneys speak a foreign language fluently.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

42 U.S.C. 2000e–4(g); 44 U.S.C. 3101.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

These records and information in these records may be used:

a. To refer charging parties to attorneys who handle litigation of employment discrimination lawsuits.

b. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Stored on prepared forms and index cards.

**RETRIEVABILITY:**

Indexed alphabetically by names of the attorneys.

**SAFEGUARDS:**

Access to this system of records is restricted to EEOC personnel who have a legitimate use for the information. This system is stored in filing cabinets.

**RETENTION AND DISPOSAL:**

Files are reviewed and updated annually.

**SYSTEM MANAGERS AND ADDRESS:**

Regional Attorney at each District Office (see Appendix A).

**NOTIFICATION PROCEDURE:**

Inquiries concerning this system of records should be addressed to the appropriate system manager. It is necessary to furnish the following information: (1) Full name of the

individual whose records are requested; (2) mailing address to which reply should be sent.

**RECORD ACCESS PROCEDURES:**

Same as above.

**CONTESTING RECORD PROCEDURES:**

Same as above.

**RECORD SOURCE CATEGORIES:**

The individual on whom the record is maintained.

**EEOC–3**

**SYSTEM NAME:**

Title VII and Americans With Disabilities Act Discrimination Case Files.

**SYSTEM LOCATION:**

Field Office where the charge of discrimination was filed (see appendix A).

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Persons, other than federal employees and applicants, who file charges alleging that an employer, employment agency, labor organization or joint labor-management apprenticeship committee has violated Title VII of the Civil Rights Act of 1964 or the Americans With Disabilities Act of 1990, or both.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

This system contains records compiled during the investigation of race, color, religion, sex, and national origin discrimination cases and cases of discrimination against individuals with disabilities. These records include:

a. Documents submitted by charging party, such as charge of discrimination, personal interview statement, medical records and correspondence.

b. Documents submitted by employer such as statement of position, correspondence, statements of witnesses, documentary evidence such as personnel files, records of earnings, EEO data, employee benefit plans, seniority list, job titles and descriptions, applicant data, organizational charts, collective bargaining agreements, petition to revoke or modify subpoena.

c. Records gathered and generated by EEOC in the course of its investigation such as letters to state or local fair employment practice agencies, correspondence with state fair employment practice agencies, witness statements, investigator's notes, investigative plan, investigator's analyses of the evidence and charge, report of initial and exit interviews, copy of deferral to state, subpoenas, decisions and letters of determination, analysis of deferral agency action, conciliation agreements, correspondence and any additional evidence gathered during the course of the investigation.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301; 42 U.S.C. 2000e–5, –8 and –9; 42 U.S.C. 12117; 44 U.S.C. 3101.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

These records and information in these records may be used:

a. To disclose pertinent information to a federal, state, or local agency or third party as may be appropriate or necessary to perform the Commission's functions under Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990.

b. To disclose information contained in these records to state and local agencies administering state or local fair employment practices laws.

c. To disclose non-confidential or non-privileged information contained in these records to the following persons after a notice of right to sue has been issued:

1. Aggrieved persons and their attorneys in case files involving Commissioner Charges provided that such persons have been notified of their status as aggrieved persons;

2. Persons or organizations filing on behalf of an aggrieved person provided that the aggrieved person has given written authorization to the person who filed on his or her behalf to act as the aggrieved person's agent for this purpose, and their attorneys;

3. Employers and their attorneys, provided that the charging party or aggrieved person has filed suite under Title VII or the Americans With Disabilities Act, or both.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

e. To disclose pertinent information to the appropriate federal, state or local agencies responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

f. To disclose pertinent information to another federal agency, to a court or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

These records are maintained in file folders and in computer processable storage media.

**RETRIEVABILITY:**

These records are cross-indexed by charging party name, employer name and charge number. The records may be retrieved by any of the above three indexes.

**SAFEGUARDS:**

Paper records are maintained in a secured area to which only authorized personnel have access. Access to and use of these records is limited to those persons whose official duties require such access. The premises are locked when authorized personnel are not on duty. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

**RETENTION AND DISPOSAL:**

Cases that are dismissed or closed for other than no cause are destroyed six months following the date of dismissal or closure. No cause files that are of value in the development of future class action or pattern and practice cases are retired to the Federal Records Center one year after the date of the last action and destroyed after three additional years. All other no cause files are destroyed one year after the date of the last action. Negotiated settlement files are destroyed one year after the calendar year in which the settlement agreement is signed or after all obligations under the agreement are satisfied, whichever occurs later. Where monetary benefits are realized in concurrent Age, Equal Pay, Title VII and Americans With Disabilities Act cases, the file is destroyed three years after the date of the last action. Other files are retired to the Federal Records Center one year after the date of the last action, including action in the federal courts or the last compliance review (the final report submitted by the respondent after conciliation to indicate compliance) and destroyed after three additional years, except landmark cases. Landmark cases are transferred to the nearest Federal Records Center two years after final court action and offered to the National Archives ten years after final court action.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director of the field office where the charge was filed.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

This system is exempt under 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Act.

**EEOC–4**

**SYSTEM NAME:**

Biographical Files.

**SYSTEM LOCATION:**

Office of Communications and Legislative Affairs, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current and former Commissioners, General Counsels and Commission officials.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Includes for each the name, date and place of birth, education, employment history, and other biographical information.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

44 U.S.C. 3101, 42 U.S.C. 2000e–4.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

These records and information in these records may be used.

a. To answer public and congressional inquiries regarding EEOC Commissioners, General Counsels and Commission officials.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Stored in licking metal file cabinets available to office employees.

**RETRIEVABILITY:**

Indexed by last name of the Commissioner, General Counsel or Commission official.

**SAFEGUARDS:**

Files are kept in the Office of Communications and Legislative Affairs, which is locked evenings, weekends and holidays.

**RETENTION AND DISPOSAL:**

Maintained permanently.

**SYSTEM MANAGER AND ADDRESS:**

Director, Office of Communications and Legislative Affairs, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

**NOTIFICATION PROCEDURES:**

Inquiries concerning this system of records should be addressed to the system manager. All inquiries should furnish the full name of the individual and the mailing address to which the reply should be mailed.

**RECORD ACCESS PROCEDURES:**

Same as above.

**CONTESTING RECORDS PROCEDURES:**

Same as above.

**RECORD SOURCE CATEGORIES:**

The individual to whom the record pertains.

**EEOC–5**

**SYSTEM NAME:**

Correspondence and Congressional Inquiries.

**SYSTEM LOCATION:**

Office of Communications and Legislative Affairs, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Charging parties, members of the general public, members of Congress and current and former EEOC employees who write letters to EEOC seeking information or assistance whose inquiries are referred to the Office of Communications and Legislative Affairs for response.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

a. Inquiries from Members of Congress, the White House and members of the general public, including current and former EEOC employees.

b. EEOC responses to the above inquiries.

c. Computer tracking system indicating the dates inquiries are received, to whom and when they are assigned for response and the dates they are answered.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

44 U.S.C. 3101; 42 U.S.C. 2000e–4.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

These records and information in these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office at the request of the individual.

b. To disclose information to another federal agency, to a court or in an administrative proceeding being conducted by a federal agency, either when the government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

These records are maintained in file cabinets and on computer tape.

**RETRIEVABILITY:**

Correspondence from members of Congress is indexed alphabetically by the last name of the member. General correspondence are indexed alphabetically by the last name of the individual making the inquiry or on whose behalf the inquiry is made. Computer entries are retrievable by name of author of a letter, by name of person or office referring letter to the Office of Communications and Legislative Affairs, by subject, by key word, by reference number, by name of person to whom assigned, and by dates assigned, due and answered.

**SAFEGUARDS:**

Files are kept in locking metal cabinets in the Office of Communications and Legislative Affairs, which is locked evenings, weekends and holidays. Computer information is coded with access limited to employees of the Office of Communications and Legislative Affairs and the Office of Information Systems Services.

**RETENTION AND DISPOSAL:**

Correspondence is maintained for three years from the date of the last correspondence and then destroyed. Correspondence control information is maintained in the computer for four years.

**SYSTEM MANAGER AND ADDRESS:**

Director, Office of Communications and Legislative Affairs, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

**NOTIFICATION PROCEDURE:**

Inquiries concerning this system of records should be addressed to the system manager. All inquiries should furnish the full name of the inividual and the mailing address to which the reply should be mailed.

**RECORD ACCESS PROCEDURES:**

Same as above.

**CONTESTING RECORDS PROCEDURES:**

Same as above.

RECORD SOURCE CATEGORIES:

Members of Congress, their staffs, the White House, charging parties, members of the general public, current and former EEOC employees.

EEOC–6

SYSTEM NAME:

Employee Assistance Program Records.

SYSTEM LOCATION:

Employee Assistance Program contractor.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current EEOC employees who have been referred to or contacted the Employee Assistance Program because of personal problems, emotional problems, or alcohol or drug abuse.

CATEGORIES OF RECORDS IN THE SYSTEM:

May contain information relating to individuals counseled by the Employee Assistance Program including supervisor's referral, (if the employee was referred by the supervisor), documentation of visits to employee counselors (federal, state, local government, or private), and notes or records made by the counselor of discussions held with the employee or with the physician, therapist or health care professional of the employee. In addition, records in this system may include documentation of treatment by a therapist at a federal, state, local government, or private institution, summary information produced at case closure, and other documents deemed pertinent to the provision of program services to the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 290dd–1 and 3; 290ee–1 and 3; 5 U.S.C. 7901; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to authorized personnel of the contractor that administers the EEOC Employee Assistance Program.

b. To disclose information to medical personnel to meet a bona fide medical emergency.

c. To disclose information to qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report or otherwise disclose patient identities in any manner (when such records are provided to qualified researchers employed by the Commission, all patient identifying information shall be removed).

Note: Disclosure of these records beyond officials of the Commission having a bona fide need for them or to the person to whom they pertain is rarely made because disclosures of information pertaining to an individual with a history of alcohol or drug abuse must be limited to comply with the restrictions of the regulations regarding the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR part 2, as authorized by 42 U.S.C. 290dd–3 and 290ee–3. Records pertaining to the physical and mental fitness of employees are, as a matter of Commission policy, afforded the same degree of confidentiality and are generally not disclosed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Indexed by name of employee.

SAFEGUARDS:

Files are maintained in locked cabinets accessible only to Employee Assistance Program personnel.

RETENTION AND DISPOSAL:

Records are retained until three years after the employee has ceased contact with the counselor or until the employee's separation or transfer, whichever comes first.

SYSTEMS MANAGERS AND ADDRESSES:

Administrator, Employee Assistance Program, Office of Management, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507; Field Office Directors (see Appendix A).

NOTIFICATION PROCEDURES:

Any person wanting to know whether this system of records contains information about him or her should contact the appropriate system manager. Such person should provide his or her full name, date of birth, and social security number.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

The sources of these records are:

a. The employee or members of the employee's family;

b. Persons to whom the employee has been referred for assistance;

c. Commission officers and employees;

d. Program counselors.

EEOC–7

SYSTEM NAME:

Employee Pay and Leave Records.

SYSTEM LOCATION:

All locations listed in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employee of EEOC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Time and attendance cards and forms; leave records (includes employee name, branch or office, pay period ending, leave and overtime used during the pay period); requests for leave (earned or advance) or leave of absence; requests for an authorization of overtime; annual attendance record (indicates name, social security number, service computation date, hours and dates worked and taken as leave, pay plan, salary and occupation code, grade, leave earned and used); thrift savings plan participation, deductions for medicare, FICA, taxes, life and health insurance, union contributions, charitable contributions, savings allotments and bond issuance and bond balance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

b. To provide a copy of an employee's Department of the Treasury Form W-2, Wage and Tax Statement, to the state, city or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the state, city or other jurisdiction and the Department of Treasury pursuant to 5 U.S.C. 5516, 5517 or 5520, or in response to a written request from an appropriate official of the taxing jurisdiction. The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction

to tax the employee is based on place of residence, place of employment, or both.

c. To disclose copies of executed city tax withholding certificates to a city pursuant to a withholding agreement between the city and the Department of the Treasury (5 U.S.C. 5520) in response to a written request from an appropriate city official.

d. To disclose the social security number only, in the absence of a withholding agreement, to a taxing jurisdiction that has furnished this agency with evidence of its independent authority to compel disclosure of the social security number, in accordance with section 7 of the Privacy Act, 5 U.S.C. 552a note.

e. To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

f. To disclose to an agency in the executive, legislative or judicial branch or the District of Columbia's Government information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

g. To disclose to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized offficial engaged in investigation or settelment of a grievance, complaint or appeal filed by an employee.

h. To disclose to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

i. To disclose to officers and employees of the General Services Administration in connection with administrative services provided to this agency under agreement with GSA.

j. To disclose information to another Federal agency, to a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Stored on magnetic tape and in file folders.

**RETRIEVABILITY:**

Indexed by an assigned employee code.

**SAFEGUARDS:**

Access to these records is limited to employees whose official duties require such access.

**RETENTION AND DISPOSAL:**

The records are destroyed after three years.

**SYSTEM MANAGER AND ADDRESS:**

Director of each Commission Office (See Appendix A).

**NOTIFICATION PROCEDURE:**

Inquiries concerning this system of records should be addressed to the system manager. It is necessary to furnish the following information: (1) Name; (2) social security number; (3) mailing address to which the response is to be sent.

**RECORD ACCESS PROCEDURES:**

Same as above.

**CONTESTING RECORD PROCEDURES:**

Same as above.

**RECORD SOURCE CATEGORIES:**

Official personnel folder, data submitted by employees and data submitted by the offices where the individuals are or were employed.

**EEOC-8**

**SYSTEM NAME:**

Employee Travel and Reimbursement Records.

**SYSTEM LOCATION:**

All locations listed in Appendix A.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current and former employees.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Includes travel orders, travel vouchers, records of travel advances, amounts owed the agency by employees for travel and other purposes, amounts payable to the employee for travel and other purposes, payments made to the employees for travel and other reimbursable transactions and a record of the difference between the cost of official travel as estimated in the travel order and the amount actually expended by the employee.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

31 U.S.C. 3512, 44 U.S.C. 3101.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose to an agency in the executive, legislative or judicial branch or the District of Columbia's Government, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

c. To disclose to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

d. To disclose to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

e. To disclose to officers and employees of the General Services Administration in connection with administrative services provided to this agency under agreement with GSA.

f. To disclose information to another Federal agency, to a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

g. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Stored on prepared forms.

**RETRIEVABILITY:**

Indexed alphabetically by name, social security number, and/or chronologically by event and name.

**SAFEGUARDS:**

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure. Files are stored in standard cabinets, safes and secured rooms.

**RETENTION AND DISPOSAL:**

These records are destroyed in accordance with GSA General Records Schedule 2.

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief, Financial Management Division, Financial and Resource Management Services, EEOC, 1801 L Street, NW., Washington, DC 20507.

**NOTIFICATION PROCEDURE:**

Employees of the Commission wishing to know whether information about them is maintained in this system of records should address inquiries to the Director of the Office where employed (see Appendix A). The individual should provide his or her full name, date of birth, social security number and mailing address.

**RECORD ACCESS PROCEDURES:**

Same as above.

**CONTESTING RECORD PROCEDURES:**

Same as above.

**RECORD SOURCE CATEGORIES:**

Bills, receipts and claims presented by employees and original data generated by the Commission.

**EEOC–9**

**SYSTEM NAME:**

Claims Collection Records.

**SYSTEM LOCATION:**

These records are located in the Finance Management Division, Financial and Resource Management Services, Office of Management, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Any individual who is indebted to the United States as a result of his or her interaction or financial activities with the Commission or another federal agency including, but not limited to, any current or former Commission employee.

**CATEGORIES OF RECORD IN THE SYSTEM:**

This system contains:

a. *Case Files.* These files contain information and evidence on the identity and location of the individual who is subject to a claim, the origin and amount of the indebtedness, decisions and determinations regarding a claim, actions taken to collect a claim, and the results of those actions. Depending on the status of a claim, a case file may include such records as documents evidencing indebtedness, written demands for payment, required notices, financial statements, medical disability statements, agency investigative reports, credit reports, written agreements for payment, intra-agency and inter-agency memoranda of consultation and opinion on the collection action, documentation resulting from a hearing, requests for waiver, requests for reconsideration, written determinations and decisions, certifications of indebtedness by this or another agency, counterclaims, judgments and documents evidencing payment or compromise of the debt.

b. *Internal Revenue Service (IRS) Mailing Address Index.* Consists of cards containing the name or other identifying information on the individual for whom mailing address information has been requested and received from the IRS, the date on which this information was received from the IRS, and the purpose to which the information has been put.

c. *Index on Disclosures to Consumer Reporting Agencies.* Records containing the name and other identifying information on the individual whose delinquent debt has been reported to consumer reporting agencies, i.e., credit bureaus, and the kind and type of information reported.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, 5514, 5522, 5584, 5705, 5724(f); 15 U.S.C. 1692; 26 U.S.C. 6331; 31 U.S.C. 3701, 3702, 3711, 3716, 3717, 3718, 3719; 44 U.S.C. 3101; 4 CFR parts 91–93, 101–105.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

These records and information in these records may be used:

a. To disclose information to appropriate officials and employees of the Department of Justice for the purposes of litigation and forced collection on administratively uncollected debts.

b. To disclose information to appropriate officials of the Department of the Treasury and the Office of Management and Budget to provide reports on debt collection activities.

c. To disclose information to another federal agency for the purpose of collecting a debt owed to the Commission by an individual through salary offset or administrative offset undertaken by the other agency upon proper certification or evidence of the debt owed from the Commission.

d. To disclose information to another federal agency for the purpose of collecting a debt owed to that agency by an individual through salary offset or administrative offset undertaken by the Commission upon proper certification or evidence of the debt owed from the other agency.

e. To disclose a debtor's name and social security number to the Secretary of the Treasury or his or her designee for the purpose of obtaining the debtor's mailing address from the IRS.

f. To disclose mailing addresses obtained from the IRS to consumer reporting agencies only for the limited purpose of obtaining a commercial credit report on the particular taxpayer.

g. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

h. To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

i. To disclose to an agency in the executive, legislative or judicial branch or the District of Columbia's government in response to its request, or at the initiation of the agency maintaining the records, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation

of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

j. To disclose to officers and employees of the General Services Administration in connection with administrative services provided to this agency under agreement with GSA.

k. To disclose information to another federal agency, to a court or in an administrative proceeding being conducted by a federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

l. To disclose to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

These records are maintained in file folders and on microfiche and index cards.

**RETRIEVABILITY:**

These records are indexed by the name of the individual and social security number. The records may be retrieved by either of these indexes.

**SAFEGUARDS:**

Records are maintained and stored in file cabinets in a secured area to which only authorized personnel have access. Access to and use of these records is limited to those persons whose official duties require such access and to those persons indicated in the listing of routine uses above.

**RETENTION AND DISPOSAL:**

Individual case files are usually retained for two years after the claim is collected. Case records on individuals whose delinquent debts are reported to consumer reporting agencies are retained indefinitely. Other case files may be maintained for a period up to ten years. IRS Mailing Address Index on any individual is not maintained beyond six years.

**SYSTEM MANAGER AND ADDRESS:**

Director, Financial Management and Resource Services, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

**NOTIFICATION PROCEDURES:**

Under the Debt Collection Act, individuals are notified if claims collection records are maintained on them in accordance with statutory procedures for salary offset, administrative offset, and disclosing information to a consumer reporting agency. Individuals may also contact the System Manager in order to obtain notification of claims collection records on themselves.

Individuals must provide their full names under which records may be maintained, their social security number, and a mailing address to which a reply should be sent.

**RECORD ACCESS PROCEDURES:**

Same as above.

**CONTESTING RECORD PROCEDURES:**

Same as above.

**RECORD SOURCE CATEGORIES:**

Information in this system of records is provided by or from:

a. The individual on whom the record is maintained;

b. Other Federal agencies;

c. Personnel, payroll, travel records, contract records or other records;

d. Administrative hearings;

e. Court records;

f. Consumer reporting agencies.

**EEOC–10**

**SYSTEM NAME:**

Grievance Records.

**SYSTEM LOCATION:**

These records are located in Personnel Management Services, Office of Management, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507 and in other headquarter offices and field offices where the grievances were filed (see Appendix A).

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current or former EEOC employees who have submitted grievances to the EEOC in accordance with part 771 of the regulations of the Office of Personnel Management (OPM) (5 CFR part 771) and EEOC Order No. 570.003, or a negotiated procedure.

**CATEOGIRES OF RECORDS IN THE SYSTEM:**

The system contains all documents related to the grievance, including statements of witnesses, reports of interviews and hearings, examiners' findings and recommendations, a copy of the original and final decision, and related correspondence and exhibits. This system includes files and records of internal grievance and arbitration systems that EEOC has or may establish through negotiations with recognized labor organizations.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301; 44 U.S.C. 3101; 5 U.S.C. 7121.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

These records and information in these records may be used:

a. To disclose information to any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request and identify the type of information requested.

b. To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose to an agency in the executive, legislative or judicial branch or the District of Columbia's government, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an indiviual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necesssary to the requesting agency's decision.

d. To disclose to another federal agency, to a court or in an administrative proceeding being conducted by a federal agency, either when the government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

e. To provide information to a congressional office from the record of an individual in response to an inquiry

from that congressional office made at the request of that individual.

f. To disclose to an authorized appeal grievance examines, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

g. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

h. To provide information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices and matters effecting work conditions.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

These records are maintained in file folders.

**RETRIEVABILITY:**

These records are retrieved by the names of the individuals on whom they are maintained.

**SAFEGUARDS:**

These records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

**RETENTION AND DISPOSAL:**

These records are shredded or burned 3 years after closing the case.

**SYSTEM MANAGER AND ADDRESS:**

If the grievance is pending at or was never raised beyond the office level, the system manager is the head of the office. (See Appendix A.) In all other situations, the system manager is the Director, Labor Management Relations Division, Office of Management, EEOC, 1801 L Street, NW., Washington, DC 20507.

**NOTIFICATION PROCEDURES:**

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. They may, however, contact the agency personnel or designated office where the action was processed regarding the existence of such records on them. They must furnish the following information for their records to be located and identified: (a) Name; (b) approximate date of closing of the case and kind of action taken; (c) organizational component involved.

**RECORDS ACCESS PROCEDURES:**

Same as above.

**CONTESTING RECORD PROCEDURES:**

Same as above.

**RECORD SOURCE CATEGORIES:**

Information in this system of records is provided:

a. By the individual on whom the record is maintained;

b. By testimony of witnesses;

c. By agency officials;

d. From related correspondence from organizations or persons.

**EEOC–11**

**SYSTEM NAME:**

Records of Adverse Actions Against Nonpreference Eligibles in the Excepted Service.

**SYSTEM LOCATION:**

These records are located in Personnel Management Services, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507 or in the headquarters and field offices in which the actions have been taken.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current or former nonpreference eligible, excepted service Equal Employment Opportunity Commission (EEOC) employees against whom an adverse action has been proposed or taken and who have not completed two years of current and continuous service in the same or similar positions. (This system covers only those adverse action files not covered by OPM/GOVT–3.)

**CATEGORIES OF RECORDS IN THE SYSTEM:**

This system contains records and documents on the processing of adverse actions for employees who are nonpreference eligibles in the excepted service and who do not have two years of continuous service in their positions. The records include copies of the notice of proposed action, materials relied on by the agency to support the reasons in the notice, replies by the employee, statements of witnesses, reports, and agency decisions.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

44 U.S.C. 3101.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

These records and information in records may be used:

a. To provide information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

b. To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose information to any source from which additional information is requested for processing any of the covered actions or in regard to any appeal or administrative review procedure, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

d. To disclose information to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, or the classifying of jobs, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. To disclose information to another federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a federal Agency, either when the government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

g. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involving in a pending judicial or administrative proceeding.

h. To disclose to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING AND RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

These records are maintained in file folders.

**RETRIEVABILITY:**

These records are retrieved by the names or social security number of the individuals on whom they are maintained.

**SAFEGUARDS:**

These records are maintained in locked metal filing cabinets to which only authorized personnel have access.

**RETENTION AND DISPOSAL:**

Records documenting an adverse action are disposed of 4 years after the closing of the case.

**SYSTEM MANAGER AND ADDRESS:**

Director, Employee Relations Division, Office of Management, and Directors of Field Offices (see Appendix A).

**NOTIFICATION PROCEDURES:**

Individuals receiving notice of a proposed action are provided access to all documents supporting the notice. They may also contact the personnel office where the action was processed regarding the existence of such records on them. They must furnish the following information for their records to be located and identified:

a. Name;

b. Approximate date of closing of case and kind of action taken;

c. Organizational component involved.

**RECORD ACCESS PROCEDURES:**

Same as above.

**CONTESTING RECORD PROCEDURES:**

Same as above.

**RECORD SOURCE CATEGORIES:**

Information in this system of records is provided:

a. By the individual on whom the record is maintained;

b. By witnesses;

c. By agency officials.

**EEOC–12**

**SYSTEM NAME:**

Telephone Call Detail Records.

**SYSTEM LOCATION:**

Resource Management Division of Financial and Resource Management Services, Office of Management, EEOC 1801 L Street, NW., Washington DC 20507, and each field office listed in Appendix A.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals (generally EEOC employees) who make long distance telephone calls from EEOC telephones and individuals who received telephone calls placed from or charged to EEOC telephones.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records relating to the use of EEOC telephones to place long distance calls; records indicating the assignment of telephone numbers to employees; records relating to the location of telephones.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

44 U.S.C. 3101.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

These records and information from these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

b. To disclose to representatives of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

c. To disclose information to another federal agency, to a court or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

d. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

e. To disclose to an agency in the executive, legislative or judicial branch or the District of Columbia's government in response to its request, or at the initiation of the EEOC, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

f. To disclose to a telecommunications company providing telecommunications support to permit servicing the account.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

These records are maintained in file folders and on computer tape and printouts.

**RETRIEVABILITY:**

Records are retrieved by employee name or identification number, by name of recipient of telephone call, by telephone number.

**SAFEGUARDS:**

Records are maintained and stored in file cabinets in a secured area to which only authorized personnel have access. Access to and use of the records are limited to those person whose official duties require such access.

**RETENTION AND DISPOSAL:**

Records are disposed of as provided in the National Archives and Records Administration's General Records Schedule 12.

**SYSTEM MANAGER AND ADDRESS:**

Director, Resource Management Division, Financial and Resource Management Services, EEOC, 1801 L Street, NW., Washington DC, 20507 and the Directors of the field offices listed in Appendix A.

**NOTIFICATION PROCEDURES:**

Inquiries concerning this system of records should be addressed to the system manager. It is necessary to provide the following information: (1) Name; (2) social security number; (3) telephone number (office number if Commission employee); (4) mailing address to which response is to be sent.

**RECORD ACCESS PROCEDURES:**

Same as above.

**CONTESTING RECORD PROCEDURES:**

Same as above.

**RECORD SOURCE CATEGORIES:**

Telephone assignment records; call detail listings; results of administrative inquiries relating to assignment of responsibilities for placement of specific long distance calls.

**EEOC–13**

**SYSTEM NAME:**

Employee Identification Cards.

**SYSTEM LOCATION:**

Resource Management Division, Financial and Resource Management Services, Office of Management, EEOC, 1801 L Street, NW, Washington DC

20507 and each of the field offices in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current EEOC employees

CATEGORIES OF RECORDS IN THE SYSTEM:

Identification cards that include name, signature, social security number, date of issue and photograph, and list of all persons who possess current identification cards. In addition, for Headquarters staff, numbered proximity cards and list of all persons with their assigned proximity card numbers, all doors controlled by the proximity cards and all persons permitted access to each door.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

44 U.S.C. 3101; 41 CFR 101–20.3.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information from these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

b. To disclose to other government agencies and to the public whether an individual is a current employee of the EEOC.

c. To disclose information to another federal agency, to a court or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

d. To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on computer tape and printouts at EEOC headquarters and on the premises of the contractor responsible for monitoring the system.

RETRIEVABILITY:

Records are retrieved by employee name, by identification number, and, for Headquarters staff, by proximity card number.

SAFEGUARDS:

Records are maintained and stored in file cabinets in a secured area to which only authorized personnel have access. Access to and use of the records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are destroyed upon termination of employment relationship.

SYSTEM MANAGER AND ADDRESS:

Director, Resource Management Division, Financial and Resource Management Services, EEOC, 1801 L Street, NW., Washington DC., 20507 and the Directors of the field offices listed in Appendix A.

NOTIFICATION PROCEDURES:

Inquiries concerning this system of records should be addressed to the system manager. It is necessary to provide the following information: (1) Name; (2) social security number; (3) mailing address to which response is to be sent.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from the employee and, for Headquarters staff, from his or her use of the assigned proximity card.

EEOC–14

SYSTEM NAME:

Employee Parking Records.

SYSTEM LOCATION:

Resource Management Division, Financial and Resource Management Services, Office of Management, EEOC, 1801 L Street, NW., Washington DC 20507.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

EEOC employees who apply for or have been assigned parking spaces in the Headquarters building and members of their car pools.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application for parking space form and addendum form for members of car pools containing employee name, office, home address and telephone number, office telephone number, description of vehicle, signature and date, and list of employees with their assigned spaces.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; 41 CFR 101–20.1.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM; INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information from these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

b. To disclose information in response to a request for discovery or for the appearance of a witness, to the extent that the information disclosed is relevant to the subject matter involved in the pending judicial or administrative proceeding.

c. To disclose information in a proceeding before a court or adjudicative body to the extent the information is relevant and necessary to the proceeding.

d. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on computer tape and printouts.

RETRIEVABILITY:

Records are retrieved by employee name.

SAFEGUARDS:

Records are maintained and stored in file cabinets in a secured area to which only authorized personnel have access. Access to and use of the records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are disposed of upon termination of employment relationship or earlier release of assigned parking space.

SYSTEM MANAGER AND ADDRESS:

Director, Resource Management Division, Financial and Resource Management Services, EEOC, 1801 L Street, NW., Washington DC 20507

**NOTIFICATION PROCEDURES:**

Inquiries concerning this system of records should be addressed to the system manager. It is necessary to provide the following information: (1) Name; (2) assigned parking space number of approximate date of application; (3) mailing address to which response is to be sent.

**RECORD ACCESS PROCEDURES:**

Same as above.

**CONTESTING RECORD PROCEDURES:**

Same as above.

**RECORD SOURCE CATEGORIES:**

Information contained in this system is obtained from the employee.

**SYSTEMS EXEMPTED FORM CERTAIN PROVISIONS OF THE ACT:**

None.

**EEOC/GOVT-1**

**SYSTEM NAME:**

Equal Employment Opportunity in the Federal Government Complaint and Appeal Records.

**SYSTEM LOCATION:**

Equal employment opportunity complaint files are maintained in an Office of Equal Employment Opportunity or other designated office of the agency or department where the complaint was filed. EEO Appeal files (including appeals from final negotiated grievance decisions involving allegations of discrimination) and petitions for review of decisions of the Merit Systems Protection Board are maintained in the Office of Review and Appeals, Equal Employment Opportunity Commission, Washington, DC. 20507 and in EEOC field offices (see Appendix A).

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Applicants for Federal employment and current and former Federal employees who contact an EEO counselor or who file complaints of discrimination or reprisal with their agency, or who file appeals on EEO complaints, petitions for review of decisions of the Merit Systems Protection Board, or appeals of final decisions in negotiated grievance actions involving allegations of discrimination.

**CATEGORIES OR RECORDS IN THE SYSTEM:**

This system of records contains information or documents compiled during the pre-complaint counseling and the investigation of complaints filed under section 717 of Title VII, section 15 of the Age Discrimination in Employment Act, section 501 of the Rehabilitation Act, and the Equal Pay Act and all appeals.

**AUTHORITY FOR MAINTENANCE OF SYSTEM:**

42 U.S.C. 2000e–16(b) and (c); 29 U.S.C. 204(f) and 206(d); 29 U.S.C. 633(a); 29 U.S.C. 791; Reorg. Plan No. 1 of 1978, 43 FR 19607 (May 9, 1978); Exec. Order No. 12106, 44 FR 1053 (Jan. 3, 1979).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to another Federal gency, to a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose to an authorized appeal grievance examiner, formal complaints examiner, adminsitrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

These records are maintained in file folders and in computer processable storage media.

**RETRIEVABILITY:**

These records are indexed by the names of the individuals on whom they are maintained.

**SAFEGUARDS:**

Access to and use of these records are limited to those persons whose official duties require such access.

**RETENTION AND DISPOSAL:**

These records are maintained for one year after resolution of the case and then transferred to the Federal Records Center where they are destroyed after three years.

**SYSTEM MANAGER AND ADDRESS:**

Within the agency or department where the complaint of discrimination or reprisal was filed, the system manager is the Director of the Office of Equal Employment Opportunity or other official designated as responsible for the administration and enforcement of equal employment opportunity laws and regulations within the agency or department.

Where an individual has appealed an EEO complaint or final negotiated grievance decision to the EEOC or petitioned the EEOC to review a decision of the Merit System Protection Board, the system manager of the appeal or petition file is the Director, Office of Review and Appeals, Equal Employment Opportunity Commission, Washington, DC. 20507.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Pursuant to subsection (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), this system of records is exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Act.

Appendix A

Albuquerque Area Office (Phoenix District), Western Bank Building, Suite 1105, 505 Marquette, NW., Albuquerque, New Mexico 87102–2189.

Atlanta District Office, Citizens Trust Bank Building, Suite 1100, 75 Piedmont Avenue, NW., Atlanta, Georgia 30335.

Baltimore District Office, 111 Market Place, Suite 4000, Baltimore, Maryland 21202.

Birmingham District Office, 1900 3rd Avenue, North, Suite 101, Birmingham, Alabama 35203–2397.

Boston Area Office (New York District), 1 Congress Street, Suite 100, Boston, Massachusetts 02114.

Buffalo Local Office (New York District), 28 Church Street, Room 301, Buffalo, New York 14202.

Charlotte District Office, 5500 Central Avenue, Charlotte, North Carolina 28212.

Chicago District Office, Federal Building, Room 930A, 536 South Clark Street, Chicago, Illinois 60605.

Cincinnati Area Office (Cleveland District), 550 Main Street, Room 7015, Cincinnati, Ohio 45202.

Cleveland District Office, 1375 Euclid Avenue, Room 600, Cleveland, Ohio 44115.

Dallas District Office, 8303 Elmbrook Drive, Dallas, Texas 75247.

Denver District Office, 1845 Sherman Street, 2nd Floor, Denver, Colorado 80203.

Detroit District Office, 477 Michigan Avenue, Room 1540, Detroit, Michigan 48226.

El Paso Area Office (San Antonio District), The Commons, Building C, Suite 100, 4171 North Mesa Street, El Paso, Texas 77902.

Fresno Local Office (San Francisco District), 1313 P Street, Suite 103, Fresno, California 93721.

Greensboro Local Office (Charlotte District), 324 West Market, Room B–27, P.O. Box 3363, Greensboro, North Carolina 27402.
Greenville Local Office (Charlotte District), 300 East Washington Street, Suite B41, Greenville, South Carolina 29601.
Honolulu Local Office (San Francisco District), 677 Ala Moana Boulevard, Suite 404, P.O. Box 50082, Honolulu, Hawaii 96813.
Houston District Office, 1919 Smith Street, 7th Floor, Houston, Texas 77002.
Indianapolis District Office, 46 East Ohio Street, Room 456, Indianapolis, Indiana 46204.
Jackson Area Office (Birmingham District), 207 West Amite Street, Jackson, Mississippi 39201.
Kansas City Area Office (St. Louis District), 911 Walnut Street, 10th Floor, Kansas City, Missouri 64106.
Little Rock Area Office (Memphis District), 320 West Capitol Avenue, Suite 621, Little Rock, Arkansas 72201.
Los Angeles District Office, 3660 Wilshire Boulevard, 5th Floor, Los Angeles, California 90010.
Louisville Area Office (Indianapolis District), 601 West Broadway, Room 613, Louisville, Kentucky 40202.
Memphis District Office, 1407 Union Avenue, Suite 621, Memphis, Tennessee 38104.
Miami District Office, 1 Northeast First Street, 6th Floor, Miami, Florida 33132.
Milwaukee District Office, 310 West Wisconsin Avenue, Suite 800, Milwaukee, Wisconsin 53203.
Minneapolis Local Office (Milwaukee District), 220 Second Street South, Room 108, Minneapolis, Minnesota 55401–2141.
Nashville Area Office (Memphis District), 50 Vantage Way, Suite 202, Nashville, Tennessee 37228.
Newark Area Office (Philadelphia District), 60 Park Place, Room 301, Newark, New Jersey 07102.
New Orleans District Office, 701 Loyola Avenue, Suite 600, New Orleans, Louisiana 70113.
New York District Office, 90 Church Street, Room 1501, New York, New York 10007.
Norfolk Area Office (Baltimore District), Systems Management of America (SMA) Building, 252 Monticello Avenue, 1st Floor, Norfolk, Virginia 23510.
Oakland Local Office (San Francisco District), 1333 Broadway, Room 430, Oakland, California 94612.
Oklahoma Area Office (Dallas District), 531 Couch Drive, Oklahoma City, Oklahoma 73102.
Philadelphia District Office, 1421 Cherry Street, 10th Floor, Philadelphia, Pennsylvania 19102.
Phoenix District Office, 4520 North Central Avenue, Suite 300, Phoenix, Arizona 85012–1848.
Pittsburgh Area Office (Philadelphia District), 1000 Liberty Avenue, Room 2036–A, Pittsburgh, Pennsylvania 15222.
Raleigh Area Office (Charlotte District), 1309 Annapolis Drive, Raleigh, North Carolina 27608–2129.
Richmond Area Office (Baltimore District), 400 North 8th Street, Room 7026, Richmond, Virginia 23240.
San Antonio District Office, 5410 Fredericksburg Road, Suite 200, San Antonio, Texas 78229.
San Diego Local Office (Los Angeles District), 880 Front Street, Room 4S–21, San Diego, California 92188.
San Francisco District Office, 901 Market Street, Suite 500, San Francisco, California 94103.
San Jose Local Office (San Francisco District), 280 South First Street, Room 4150, San Jose, California 95113.
Savannah Local Office, 10 Whitaker Street, Suite B, Savannah, Georgia 31401.
Seattle District Office, 2815 Second Avenue, Suite 500, Seattle, Washington 98121.
St. Louis District Office, 625 North Euclid Street, 5th Floor, St. Louis, Missouri 63018.
Tampa Area Office (Miami District), 501 East Polk Street, 10th Floor, Tampa, Florida 33602.
Washington Field Office, 1400 L Street, NW., Suite 200, Washington, DC. 20005.

[FR Doc. 91–5913 Filed 3–13–91; 8:45 am]
BILLING CODE 6750–06–M

## FEDERAL MARITIME COMMISSION

**[Agreement No. 224–200482 and 224–002401–012]**

### Georgia Ports Authority, et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 224–200482.

*Title:* Georgia Ports Authority/ Companhia Maritima Nacional Terminal Agreement.

*Parties:* Georgia Ports Authority (GPA), Companhia Maritima Nacional (CMN).

*Synopsis:* The Agreement provides for: CMN's use of GPA's terminal facility at Savannah, Georgia; and CMN to pay a consolidated rate of $75.00 per container, a loading/unloading of rail cars rate of $33.17 per container, a stack utilization fee (storage) of $4.85 per container, and an import box computer fee of $0.58 per container. All crane rental used for breakbulk cargo will be at GPA's Tariff rates.

*Agreement No.:* 224–002401–012.

*Title:* City of Long Beach/Sea-Land Service, Inc. Terminal Agreement.

*Parties:* City of Long Beach, Sea-Land Service, Inc.

*Synopsis:* The Agreement amends the basic agreement to: (1) Modify the descriptions of several parcels of the premises; (2) grant an option to have a parcel preferentially assigned; and (3) adjust the rent for the use of the assigned premises.

By order of the Federal Maritime Commission.

Dated: March 11, 1991.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 91–6028 Filed 3–13–91; 8:45 am]
BILLING CODE 6730–01–M

**[Agreement No. 224–200410–001]**

### Puerto Rico Ports Authority, et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 stat. 733, 75 stat. 763, 46 U.S.C. section 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

*Agreement No.:* 224–200410–001.

*Title:* Puerto Rico Ports Authority/ Sea-Land Service, Inc. Terminal Agreement.

*Parties:* Puerto Rico Ports Authority, Sea-Land Service, Inc.

*Filing Party:* Ms. Mayra N. Cruz Alvarez, Contracts Supervisor, Puerto Rico Ports Authority, G.P.O. Box 2829, San Juan, PR 00936.

*Synopsis:* The Agreement amends the parties' basic agreement to: add 3,400 sq. ft. of property to be used on an exclusive basis; and increase rent accordingly.

By Order of the Federal Maritime Commission.

Dated: March 11, 1991.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 91-6029 Filed 3-13-91; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### C&S/Sovran Financial Corporation; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 2, 1991.

**A. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. C&S/Sovran Financial Corporation,* Norfolk, Virginia; to engage *de novo* through its subsidiary, Sovran Investment Corporation, Norfolk, Virginia, in (1) providing to both its retail and institutional brokerage customers, investment advice in connection with the purchase and sale for the customer's account of a broad range of securities in the secondary market, as well as shares of mutual funds and interests in unit investment trusts; (2) providing brokerage services, but not investment advice, to customers regarding the purchase and sale of shares of investment companies advised by an affiliated bank; (3) providing discretionary investment management services to its institutional customers. These activities have been approved by Board order. *J.P. Morgan & Co.*, 73 Federal Reserve Bulletin 810 (1987); *Bank of New England Corporation*, 74 Federal Reserve Bulletin 700 (1988); *PNC Financial Corp*, 75 Federal Reserve Bulletin 396 (1989). These activities will be conducted worldwide.

Board of Governors of the Federal Reserve System, March 8, 1991.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 91-6030 Filed 3-13-91; 8:45 am]

BILLING CODE 6210-01-F

### First Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 2, 1991.

**A. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. First Bancorp, Inc.*, Huron, South Dakota; to acquire the assets of Stapp Insurance Agency, Newell, South Dakota, and Brunner Insurance Agency, Nisland, South Dakota, pursuant to section 4(c)(8)(D) of the Bank Holding Company Act. Applicant currently operates insurance agency pursuant to § 4(a)(2) of the Bank Holding Company Act and has requested that the Board review its right to acquire insurance agencies pursuant to § 4(c)(8)(D).

Board of Governors of the Federal Reserve System, March 8, 1991.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 91-6031 Filed 3-13-91; 8:45 am]

BILLING CODE 6210-01-F

### George D. Francklow, Jr.; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than April 2, 1991.

**A. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

*1. George D. Francklow, Jr.*, Houston, Texas; to acquire an additional 4.0 percent of the voting shares of Guardian Bancshares, Inc., Houston, Texas, for a total of 12.25 percent and thereby indirectly acquire Guardian Bank of Houston, Houston, Texas.

Board of Governors of the Federal Reserve System, March 8, 1991.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 91-6032 Filed 3-13-91; 8:45 am]

BILLING CODE 6210-01-F

## TAG Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 2, 1991.

**A. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. TAG Bancshares, Inc.*, Trenton, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bank & Trust, Inc., Trenton, Georgia.

*2. Tennessee Bancorp, Inc.*, Columbia, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of First Federal Savings & Loan Association, Columbia, Tennessee, which is to be converted to a national bank to be known as Tennessee National Bank.

**B. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. First Michigan Bank Corporation*, Holland, Michigan; to merge with Northwestern Bank Corporation, East Jordan, Michigan, and thereby indirectly acquire Northwestern State Bank, East Jordan, Michigan.

**C. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. M & F Bancorp, Inc.*, Holly Springs, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of Merchants & Farmers Bank, Holly Springs, Mississippi.

**D. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. BOK Financial Corporation*, Tulsa, Oklahoma; to become a bank holding company by acquiring 99.9 percent of the voting shares of Bank of Oklahoma, N.A., Tulsa, Oklahoma.

Board of Governors of the Federal Reserve System, March 8, 1991.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 91-6033 Filed 3-13-91; 8:45 am]

BILLING CODE 6210-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Advisory Committee; Renewal

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) announces the renewal of the Antiviral Drugs Advisory Committee by the Secretary of Heath and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463 (5 U.S.C. app. 2)).

**DATES:** Authority for this committee will expire on February 15, 1993, unless the Secretary formally determines that renewal is in the public interest.

**FOR FURTHER INFORMATION CONTACT:** Richard Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: March 7, 1991.

**Alan L. Hoeting,**

*Acting Associate Commissioner for Regulatory Affairs*

[FR Doc. 91-6037 Filed 3-14-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91F-0059]

## Huls America, Inc.; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Huls America, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a synthetic triglyceride mixture as a cocoa butter substitute.

**FOR FURTHER INFORMATION CONTACT:** Laureen V. Peters, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202-426-8950.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (Section 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that Huls America, Inc., 80 Centennial Ave., P.O. Box 456, Piscataway, NJ 08855-0456, has filed a petition (FAP 7A4025) proposing that the food additive regulations be amended to provide for the safe use of a synthetic triglyceride mixture (CAS Reg. No. 85665-33-4), obtained by reacting fatty acids derived from coconut or palm kernel oil with glycerol, as a cocoa butter substitute.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: March 7, 1991.

**Fred R. Shank,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 91-6038 Filed 3-13-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91P-0010]

## Cottage Cheese Deviating From Identity Standard; Temporary Permit for Market Testing

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Borden, Inc., to market test a product designated as "nonfat cottage cheese" that deviates from the U.S. standards of identity for cottage cheese (21 CFR 133.128), dry curd cottage cheese (21 CFR 133.129), and lowfat cottage cheese (21 CFR 133.131). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

**DATES:** The permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than June 12, 1991.

**FOR FURTHER INFORMATION CONTACT:** Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0343.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Borden, Inc., 180 East Broad St., Columbus, OH 43215.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standards of identity for cottage cheese (21 CFR 133.128) and lowfat cottage cheese (21 CFR 133.131) in that the milkfat content of the test product is less than 0.5 percent compared to not less than 4.0 percent milkfat in cottage cheese and 0.5 to 2.0 percent milkfat in lowfat cottage cheese. The test product also deviates from the U.S. standard of identity for dry curd cottage cheese (21 CFR 133.129) because of the added dressing. The product meets all requirements of the standards with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to cottage cheese products with dressing but contains less fat.

For the purpose of this permit, the name of the product is "nonfat cottage cheese." This permit provides for the temporary marketing of a total of 1,500,000 pounds (680,400 kilograms) of the test product. The product will be manufactured at Meadow Gold plants in Greeley, CO 80631; Honolulu, HI 96805; Boise, ID 83707; Champaign, IL 61824; Jackson, MS 39704; Kalispell, MT 55901; Albuquerque, NM 87103; Lincoln, NE 68501; Youngstown, OH 44512; Tulsa, OK 74101; Sulphur Springs, TX 75482; Charleston, WV 25302; and Milwaukee, WI 53214, and distributed in Alabama, Arkansas, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Carolina, Ohio, Oklahoma, South Carolina, Texas, Utah, Virginia, West Virginia, and Wisconsin.

Each of the ingredients used in the food must be stated on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than June 12, 1991.

Dated: March 6, 1991.

**Fred R. Shank,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 91-6039 Filed 3-13-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91N-0085]

## Wyeth-Ayerst Laboratories, Inc.; Withdrawal of Approval of Portions of Two New Drug Applications for Phenergan

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of those portions of two new drug applications (NDA's) that provide for the over-the-counter (OTC) marketing of two Phenergan Syrup products. This action is based on the written request of Wyeth-Ayerst Laboratories, Inc., P.O. Box 8299, Philadelphia, PA 19101.

**EFFECTIVE DATE:** April 15, 1991.

**FOR FURTHER INFORMATION CONTACT:** Douglas I. Ellsworth, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

**SUPPLEMENTARY INFORMATION:** Wyeth-Ayerst Laboratories, Inc. (Wyeth), holds approved NDA's that provide for prescription marketing of the following promethazine-containing combination drug products:

NDA 8-604 for Phenergan VC Syrup containing phenylephrine hydrochloride and promethazine hydrochloride.

NDA 11-265 for Phenergan with Dextromethorphan Syrup containing dextromethorphan hydrobromide and promethazine hydrochloride.

On August 11, 1988, FDA approved supplemental NDA's to NDA's 8-604 and 11-265 that provide for the OTC labeling and marketing of Phenergan VC Syrup and Phenergan DM Syrup (the same as Phenergan with Dextromethorphan Syrup).

Promethazine-containing combination drug products are also under review in the agency's OTC Drug Review (Docket No. 76N-052G). Under the OTC Drug Review, a citizen petition and comments have been filed expressing concerns about the safety of the OTC marketing of promethazine-containing products. This issue is currently under review by the agency.

Because of these concerns, Wyeth has requested that FDA withdraw approval of those portions of NDA's 8-604 and 11-265 that provide for the OTC labeling and marketing of Phenergan VC Syrup and Phenergan DM Syrup. Wyeth notes that the issues concerning the OTC marketing of promethazine-containing products are best resolved solely in the public forum provided by the agency's OTC Drug Review monograph process.

Accordingly, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of those portions of NDA's 8-604 and 11-265 that provide for the OTC marketing of Phenergan VC Syrup and Phenergan DM Syrup, and all amendments and supplements thereto, is hereby withdrawn, effective April 15, 1991. This withdrawal of approval does not affect the prescription promethazine-containing products covered by NDA's 8-604 and 11-265.

Dated: March 6, 1991.

**Carl C. Peck,**

*Director, Center for Drug Evaluation and Research.*

[FR Doc. 91-6041 Filed 3-13-91; 8:45 am]

BILLING CODE 4160-01-M

## Advisory Committees; Meetings

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces forthcoming meetings of public advisory committees of the Food and Drug

Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

**MEETINGS:** The folowing advisory committee meetings are announced:

**Veterinary Medicine Advisory Committee**

*Date, time, and place.* April 10 and 11, 1991, 8:30 a.m., Versailles Ballroom III, Holiday Inn-Bethesda, 8120 Wisconsin Ave., Bethesda, MD.

*Type of meeting and contact person.* Open committee discussion, April 10, 1991, 8:30 a.m. to 10 a.m.; open public hearing, 10 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 2 p.m.; open public hearing, 2 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 4:30 p.m.; open committee discussion, April 11, 1991, 8 a.m. to 9 a.m.; open public hearing, 9 a.m. to 11 a.m.; open committee discussion, 11 a.m. to 11:30 a.m.; Gary E. Stefan, Center for Veterinary Medicine (HFV-244), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-0830.

*General function of the committee.* The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal disease and increased animal production.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

*Open committee discussion.* The committee will discuss animal drug screening methods, the role of the veterinary medicine advisory committee, and limiting *Salmonella* exposure of food animals.

**Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee**

*Date, time and place.* April 29, 1991, 9 a.m., rm. 503A-525A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

*Type of meeting and contact person.* Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Colin M. Pollard, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1180.

*General function of the committee.* The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before April 12, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open committee discussion.* The committee will discuss a premarket approval application (PMA) for a chorionic villus sampling catheter and make a recommendation on the PMA. The committee will also review previous committee recommendations made on the use of electrosurgery during laparoscopy for tubal sterilization and other procedures.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Commitee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: March 7, 1991.

Alan L. Hoeting,

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 91-6042 Filed 3-13-91; 8:45 am]

BILLING CODE 4160-01-M

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## Public Workshop; Plasma Volume Expanders

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) and the National Heart, Lung, and Blood Institute of the National Institutes of Health (NIH) are announcing a forthcoming 2-day public workshop to discuss issues concerning plasma volume expanders.

**DATES:** The workshop will be held on Monday, March 25, and Tuesday, March 26, 1991, 8:30 a.m. to 5:30 p.m.

**ADDRESSES:** The workshop will be held in the Lister Hill Auditorium, Bldg. 38A, Lister Hill National Center, National Library of Medicine, NIH, 9000 Rockville Pike, Bethesda, MD. Requests for a copy of the tentative workshop agenda may be submitted to the Food and Drug Administration, Center for Biologics Evaluation and Research, Congressional, International, and Consumer Affairs Staff (HFB–142), 5600 Fishers Lane, MPN–3, Rockville, MD 20857, 301–295–8228. Copies of the final agenda will be available at the workshop.

**FOR FURTHER INFORMATION CONTACT:** Andrew Shrake, Center for Biologics Evaluation and Research (HFB–430), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, Facsimile 301–480–3254.

**SUPPLEMENTARY INFORMATION:** On March 25 and 26, 1991, FDA and the Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute of NIH are sponsoring a workshop to assess plasma volume expanders. The purpose of the workshop is to develop, through presentations and discussions, information that the agencies can use to address the following issues: (1) The clinical and physiologic endpoints for the use of plasma volume expanders; (2) appropriate controls for assessing plasma volume expanders during clinical studies; (3) the indications and contraindications for clinical use of plasma volume expanders; and (4) the areas of research for future clinical investigations. The agencies may use the information provided during the workshop to develop plans for further scientific and regulatory activities related to plasma volume expanders.

The workshop will consist of numerous presentations by invited speakers during the morning and afternoon sessions on March 25, 1991, and the morning session on March 26, 1991. A period of open discussion will take place at the end of each morning and afternoon session. A general discussion will take place on the afternoon of March 26, 1991.

Since seating for the workshop is limited, persons interested in attending should contact Andrew Shrake (address above).

Dated: March 8, 1991.

**Gary Dykstra,**

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 91–6043 Filed 3–13–91; 8:45 am]

BILLING CODE 4160–01–M

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**[Docket No. 91N–0038]**

## Petitions Permitted by the Nutrition Labeling and Education Act of 1990

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; request for information.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that it is developing procedural regulations to govern the content, submission, and agency review of the four types of petitions described within the Nutrition Labeling and Education Act of 1990 (the 1990 amendments). FDA is requesting information and comments from any interested person as to the structure and content of these procedural regulations to assist the agency in their development. The agency is also advising that it will deny, or defer action on, any petition requesting action under the 1990 amendments that is submitted before promulgation of final regulations for petitions.

**DATES:** Comments to this notice should be submitted by May 13, 1991.

**ADDRESSES:** Written comments on this notice to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth J. Campbell, Center for Food Safety and Applied Nutrition (HFF–312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0229.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On November 8, 1990, the President signed into law the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101–535). The 1990 amendments make the most significant changes in food labeling law since the passage of the Federal Food, Drug, and Cosmetic Act of 1938 (the act). The 1990 amendments add section 403(q) to the act which specifies in part: (1) That, with certain exceptions, a food is to be considered misbranded unless its label or labeling bears nutrition labeling; and (2) that certain nutrients and food components are to be included in nutrition labeling, allowing the Secretary to add or delete nutrients by regulation.

The 1990 amendments also add section 403(r) to the act which specifies in part: (1) That label or labeling claims characterizing the level of any nutrient (hereinafter referred to as "descriptors") shall be in accordance with regulations promulgated by FDA; (2) that label or labeling claims characterizing the relationship of nutrients to a disease or a health-related condition (hereinafter referred to as health claims) shall be in accordance with regulations promulgated by FDA; (3) that any person may petition FDA to amend the regulations for descriptors or health claims; and (4) that any person may petition FDA for permission to use an implied claim concerning the level of a nutrient in a food in a brand name.

In addition, the 1990 amendments include, in new section 403A, provisions on the preemptive effect of the misbranding sections of the act. Section 403A of the act provides for: (1) The preemption of State requirements that pertain to standards of identity, nutrition labeling, health claims, and certain other matters; and (2) the submission of petitions from a State or a political subdivision of a State (hereinafter collectively referred to as State) for exemption of State requirements from preemption.

The 1990 amendments prescribe varying effective dates for its provisions on preemption of State requirements:

(1) A State standard of identity for a food that is the subject of a standard of identity established under section 401 of the act that is not identical to the Federal standard of identity, and State requirements on the effect of such a standard that are not identical to the requirements of section 403(g) of the act, were preempted on the date of enactment of the 1990 amendments;

(2) State requirements for the labeling of food that relate to the use of the term "imitation," the placement of information on the manufacturer, packer, or distributor and on the quantity of contents, and ingredient lists that are not identical to sections 403(c), 403(e), or 403(i)(2) of the act are preempted effective November 8, 1991;

(3) The preemption of State requirements for labeling of the type described in section 403(b) (offered for sale under name of another food), 403(d) (container misleading), 403(f) (prominence of required information on label), 403(h) (standards of quality and

fill), 403(i)(1) (common or usual name of food), or 403(k) (labeling of artificial flavoring, artificial coloring, or chemical preservative) of the act will take effect on a date that is to be determined based on the results of a study to assess the adequacy of Federal implementation of these sections and subsequent agency action; and

(4) State requirements for nutrition labeling or health claims are preempted on the date that regulations to implement sections 403 (q) and (r) of the act take effect, in any case no later than May 8, 1993.

The State requirements listed in items (3) and (4) may be excepted from the specified effective dates for a State if that State submits by May 8, 1992, a petition requesting exemption from preemption until either November 8, 1992, or FDA action on the petition, whichever occurs later.

## II. Petitions

The 1990 amendments provide for four categories of petitions. FDA will refer to the three categories of petitions that involve food label or labeling health claims or descriptors collectively as "health claim or descriptor petitions." The fourth category of petition can only be submitted by a State and thus will be referred to as "State petitions."

The various petitions described in the 1990 amendments may be summarized as follows:

(1) Section 403(r)(4)(A)(i) of the act permits petitions requesting a regulation to define a term to describe a level of a nutrient in a food (e.g., "low fat" or "high fiber") or a regulation to authorize a health or disease-related claim on food labels or labeling.

(2) Section 403(r)(4)(A)(ii) of the act permits petitions requesting permission to use terms consistent with defined terms (e.g., "rich in calcium" instead of "excellent source of calcium") in a claim concerning the level of a nutrient in a food.

(3) Section 403(r)(4)(A)(iii) of the act permits petitions requesting permission to use an implied claim concerning the level of a nutrient in a food in the food's brand name (e.g., "Hy-Cal").

(4) Section 403A(b) of the act permits petitions from States requesting exemption from Federal preemption of State requirements that differ from Federal requirements as they pertain to standards of identity and certain aspects of misbranding.

One of the purposes of this document is to provide notice that the agency is developing procedural regulations that will prescribe the types of information necessary to support each of these types of petitions, the format in which they should be submitted to the agency, and the procedures that the agency will follow in its review of the petitions. The agency believes that the issuance of these procedural regulations is a necessary first step in providing a framework within which industry, States, and other interested persons can develop the petitions authorized by the 1990 amendments and within which the agency can evaluate and act on such petitions. The absence of such a framework could lead to inadequate petitions, inconsistent agency action, and the improper use of resources on the part of industry, the States, other interested persons, and FDA. Recognizing the significance of these various types of petitions, the agency is giving priority to the development of procedural regulations for these petitions.

The agency recognizes that interested persons may want to propose changes in nutrition labeling regulations other than those covered by the above petitions, e.g., to add nutrients or change the format in which nutrients are declared. The 1990 amendments did not provide specific provisions for petitions for such changes. Thus, the agency is not addressing these possibilities in this notice. The agency believes that its current regulations for the submission of citizen petitions under § 10.30 (21 CFR 10.30) provide adequate procedures for interested persons to propose changes in the regulations not covered by the petitions in this notice.

### *A. Health Claim or Descriptor Petitions*

The 1990 amendments prescribe the extent to which a health claim or descriptor petition may request an amendment to the regulations relating to these matters, the type of information necessary to support such a petition, and timeframes for agency action on such a petition. The 1990 amendments require that a heath claim or descriptor petition include an explanation of the reasons why the claim that is the subject of the petition meets the requirements of section 403(r) and a summary of the scientific data that support those reasons. The agency is seeking comments or information as to the extent to which the procedural regulations should specify the types and extent of supporting data and information necessary for a petition on descriptors or health claims.

The 1990 amendments prescribe differing timeframes for agency action on the various types of health claim or descriptor petitions. FDA must either deny or file within 100 days of receipt a petition for a regulation concerning descriptors or health claims. If the agency denies the petition, it is not made available to the public. If the agency files the petition, FDA must either deny it or publish a proposed regulation responsive to the petition within 90 days of filing. The 1990 amendments require that the agency issue a final decision within 90 days denying or granting a petition to use alternative terms that are consistent with the descriptor terms defined by FDA regulation.

The 1990 amendments require that FDA publish a notice of opportunity for public comment for any petition to the agency for permission to use an implied descriptor claim in a brand name. FDA is to grant such a petition if the implied claim in the brand name is not misleading, and if it is consistent with the terms established by FDA regulations concerning descriptors. FDA must act on the petition within 100 days of receipt, and it is to be considered granted if the agency does not act on it within that period.

The agency is seeking comments or information on a variety of topics concerning its handling of these types of health claim or descriptor petitions, including: (1) What criteria should it use in evaluating the various health claim or descriptor petitions; (2) how, when, and to what extent should the agency give public notice of petitions; and (3) what should be the form for agency response to the alternative term and implied descriptor claim petitions, e.g., regulation, advisory opinion, or letter. The provisions of section 403(r) of the act apply to dietary supplements as well as to conventional foods. Section 403(r)(5)(D) of the act provides that a health claim with respect to a dietary supplement of vitamins, minerals, herbs, or other similar nutritional supplements shall be subject to a procedure and standard, respecting the validity of such claims, established by regulation by FDA. In this notice, the agency is seeking comments on the appropriate procedure for establishing regulations on permissible health claims for dietary supplements.

The agency requests comments on whether it should make these types of claims subject to the same petition process that it establishes for other health claims, or whether a separate process is appropriate. Comments that support the latter view should state what type of procedure would be appropriate.

### *B. State Petitions*

The 1990 amendments provide that FDA may, upon consideration of a State petition, exempt from preemption any

State requirement that: (1) Would not cause any food to be in violation of any applicable requirement under Federal law; (2) would not unduly burden interstate commerce; and (3) is designed to address a particular need for information, which need is not met by the requirements of the Federal law.

The agency is seeking comments or information concerning the content and its handling of State petitions for exemption from preemption. The agency would like to receive any comments that interested persons may have as to what types of information or data a State petition should contain to show that State requirements do not unduly burden interstate commerce or are designed to address a particular need for information that is not met by the requirements of the Federal law. Thus, the agency is requesting any suggestions that interested persons may have on the approach that FDA should take in making these determinations. The agency would appreciate comments on the extent to which, in deciding whether State requirements "unduly burden" interstate commerce, it should consider the health benefits of the State requirement.

*C. Action on Petitions*

As noted above, the agency is preparing documents to establish procedural regulations to cover health claim or descriptor and State petitions. Until the agency has promulgated these and other implementing regulations under the 1990 amendments in final form, the agency believes that it would be inappropriate for it to act on such petitions. In most cases such petitions would not be warranted, and the agency would not be in a position to act on them until it has issued basic regulations implementing the provisions of the 1990 amendments, e.g., regulations defining appropriate descriptor terms such as "free," "light," or "high." The agency also believes that the most efficient use of its resources would be for it to first establish regulations that define the types of information that will be necessary to include in petitions. For these reasons, the agency is advising that it is likely to deny, without prejudice, any health claim or descriptor petition submitted under the provisions of the 1990 amendments until FDA has promulgated final procedural regulations concerning the submission and content of such petitions.

The 1990 amendments provide that certain provisions for preemption should not apply to a State that submits a petition within the 18 months following the enactment date. Because this provision gives special standing to States that submit petitions, the agency is likely to defer action on, rather than to deny, State petitions for exemption from preemption until after the promulgation of final procedural regulations. Similarly, the agency also is likely to defer action on State petitions for which filing does not engender such special standing, e.g., a petition for exemption from preemption relative to food standards.

**III. Comments**

Interested persons may, on or before May 13, 1991, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 8, 1991.

**Gary Dykstra,**

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 91-6040 Filed 3-13-91; 8:45 am]

BILLING CODE 4160-01-M

## Health Resources and Services Administration

### Pediatric Acquired Immune Deficiency Syndrome (AIDS); Health Care Demonstration Projects

**AGENCY:** Health Resources and Services Administration, PHS, DHHS.

**ACTION:** Notice of availability of funds.

**SUMMARY:** The Maternal and Child Health Bureau (MCHB), Health Resources and Services Administration (HRSA) announces that fiscal year (FY) 1991 funds are available for grants for Pediatric AIDS Health Care Demonstration Projects and National Issues of High Priority. Projects will be funded to demonstrate strategies and innovative models for medical intervention in pediatric AIDS and coordinated medical and social services for children, youth, and women of childbearing age with Human Immunodeficiency Virus (HIV) infection, AIDS or other related conditions, or those at risk for developing infection and its consequences. Funds were appropriated for this purpose by Public Law 101-517. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This announcement is related to the priority area of HIV infection. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock Number 017-001-0474-0) or Healthy People 2000 (Summary Report: Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (telephone 202-783-3238).

**DATES:** The deadline for receipt of applications is May 13, 1991. Applications shall be considered as meeting the deadline if they are either: (1) Received by the Grants Management Branch at the address below on or before the deadline date; or (2) postmarked on or before the deadline date, and received in time for submission to the review group

Applicants must obtain a legibly dated U.S. Postal Services postmark or a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing. Grant applications received after the deadline will be returned to the applicant.

**FOR FURTHER INFORMATION CONTACT:** Additional information relating to technical and program issues may be obtained from: Beth Roy, Division of Services for Children with Special Health Needs, MCHB, Parklawn Building, room 9-48, 5600 Fishers Lane, Rockville, Maryland 20857, 301-443-9051.

Grant applications and additional information regarding business, administrative or fiscal issues related to the awarding of grants under this notice may be requested from: Grants Management Officer, suite 100A, 12300 Twinbrook Parkway, Rockville, Maryland 20852, 301-443-1440. The original and two (2) copies of the application must be submitted to the Grants Management Officer.

**SUPPLEMENTARY INFORMATION:**

**Program Background and Objectives**

Through October 1990, 154,917 cases of AIDS have been reported to the Centers for Disease Control (CDC). Of these, 2,686 have been infants and children 0-12 years of age and 604 have been adolescents 13-19 years of age and the number of new cases of AIDS among children is growing at an alarming rate—up 17 percent since 1988. Approximately one-half of the known cases in this pediatric population have died. Minority children comprise the vast majority of pediatric AIDS cases: 51 percent of cases are black and 26 percent are Hispanic. In addition, more

than half of the hemophilia population has been exposed to HIV because of their reliance on blood products which were not tested for HIV antibody until May 1985, with the result that children with hemophilia ages 16–19 comprise over 30 percent of all AIDS cases in that age group.

The cost of providing a full range of services in the pediatric population with AIDS is high, largely reflecting the long periods of high-cost hospitalization these children may experience. It has been MCHB's experience with other populations of children with complex health care needs that comprehensive, coordinated approaches to care in ambulatory community-based settings result in shorter hospital stays, thus tending to reduce medical costs. The pediatric AIDS projects will address the incidence and cost of HIV/AIDS infection in women, infants, children, youth, and families within the context of community-based, family-centered, coordinated systems of care that include outreach and support services.

The escalation in the number of women of childbearing age who have HIV infection has, through perinatal transmission, increased pediatric AIDS to epidemic proportions. The CDC has reported that from an estimated 18 cases in 1980, the number of AIDS cases in women between the ages 20–40 has increased to 10,956 cases as of October 1990. Acquired Immunodeficiency Syndrome is now one of the five leading causes of death among this age group. Faced with their own illness, many women must also be caregivers to HIV/AIDS-infected infants and mates. As more women become incapacitated or die, more infants are orphaned, compounding the devastation of families. The pediatric AIDS projects should develop community-based, family-centered, coordinated systems of care which will address problems confronting women with HIV/AIDS infection, such as substance abuse, access to needed health care and supportive services, and limited access to clinical research trials that show therapeutic promise.

The number of persons with HIV infection involved in clinical trials versus the number of people eligible for clinical trials is small. Women and children, especially minorities, are under-represented in federally financed trials, although efforts are being made to involve them in such research. This limits access to experimental therapies as well as the basic health care services that many receive only through participation in trials. The projects should collaborate with federally financed clinical trials located in their geographical areas in order to make such research accessible to more women and children.

The pediatric AIDS projects are designed to further the coordination of services for women, children, youth, and families of childbearing age with HIV infection, AIDS or related conditions, or those at risk for developing infection and its consequences. This coordination includes those activities supported by Title V of the Social Security Act, the existing Pediatric AIDS Health Care Demonstration Projects previously funded by MCHB, the established network of hemophilia treatment centers, and other departmental AIDS Activities, particularly those funded under title I and title II of the Ryan White C.A.R.E. Act. The comprehensive system of services for women, children, youth, and families infected with HIV should be interwoven with the existing service programs, including Medicaid, that generally serve children and families with special health care needs.

While 66 percent of pediatric AIDS cases are found in the 16 metropolitan areas with the highest prevalence of AIDS, at the other end of the geographical spectrum are rural communities in which the total number of new Aids cases has increased 37 percent in just a 1-year period, compared to a 5 percent increase in metropolitan areas. The growth of AIDS among women in rural areas—attributed to a combination of substance abuse and sexual activity—highlights the need for a special emphasis on developing systems which assure access to primary health care services in rural areas as well as AIDS education and treatment. Since the number of women with AIDS is still small in these areas, the opportunities for advance planning ae still possible.

**Purpose**

It is generally recognized that there is a need for the development of strategies and innovative models for managing pediatric patients with HIV/AIDS, which emphasize service delivery in outpatient and community settings and reduce the amount of time spent in hospital settings.

Two categories of projects, which are intended to accomplish these purposes and to provide solutions to critical problems resulting from the AIDS crisis, will be funded in FY 1991. The first category, the Pediatric AIDS Health Care Demonstration Projects, initiated in 1988, should: (1) Demonstrate effective ways to prevent infection, especially through the reduction of perinatal transmission; (2) develop community-based, family-centered, coordinated services for infected women, infants, children, youth, and families; and (3) develop programs to reduce the spread of HIV infection to vulnerable populations, especially minorities and young people. The Pediatric AIDS Health Care Demonstration Projects should serve as models for other communities and should identify and coordinate the range of resources needed to provide appropriate and effective care to the affected population. These projects will focus on local capacity-building, making maximum use of all available public and private resources for reaching and providing health care and supportive services to women and children most at risk. These include other appropriate Federal, State, and local programs serving children with special health care needs (e.g., Medicaid, developmental disabilities, special education) and providers, payers, organizations, and support groups in the private sector with a similar focus.

Priorities for funding under the Pediatric AIDS Health Care Demonstration Projects will be given to the following geographic areas: (1) Metropolitan areas with a high prevalence of HIV/AIDS or emerging areas of HIV infection; and (2) rural areas where there is evidence of a rapid growth in HIV infection and where access to appropriate care and AIDS/HIV education are inadequate. Within the above geographic areas, priority will be given to projects which demonstrate the ability to integrate services at the community level and develop linkages with appropriate providers and financing mechanisms including: other AIDS services and clinical research programs; hemophilia treatment; drug treatment; women's health services; family planning centers; community health centers; and maternal and child health programs supported by title V. Specific attention must be paid to demonstrated coordination of programs and coalitions funded under auspices of title XXVI programs of the Pubic Health Service Act, known as the Ryan White C.A.R.E. Act.

A second category of projects is intended to focus on National Issues of High Priority in pediatric AIDS, and should address those issues which are of critical importance to women, infants, children, youth, and families with HIV/AIDS. These projects should deal with issues that can interfere with or prevent HIV-infected children and their families from receiving services they require. Projects funded in this category have included curriculum development for

training family service providers; and development of proposed guidelines on confidentiality for newborns and their mothers. The issues for FY 1991 will include but not be limited to (1) financing of services to persons with HIV/AIDS; (2) the role of substance abuse in the spread of HIV infection; and (3) HIV infected women's issues.

### Availability of Funds

Approximately $10.5 million is available for competitive grant applications for the categories of projects described above, i.e., (1) Pediatric AIDS Health Care Demonstration Projects; and (2) National Issues of High Priority in Pediatric AIDS. It is anticipated that up to 17 grants will be made in Category (1) for impacted metropolitan areas, and up to two grants for rural areas; and four to five grants in Category (2). Project periods for Category (1) will be 3 years and up to 3 years for Category (2).

Pediatric AIDS grantees supported by HRSA will be expected to coordinate their projects with other Federal, State, and local programs concerned with AIDS including, but not limited to: (1) Title V programs: Maternal and Child Health Services Block Grants, including Hemophilia Services Projects, and other relevant Special Projects of Regional and National Significance grants under title V; (2) HRSA activities and programs funded under authority of the Ryan White C.A.R.E. Act; (3) HRSA Adult Service Demonstration Projects; (4) Community Health Centers and Migrant Health Centers; (5) CDC HIV/AIDS prevention activities; (6) Medicaid; (7) the education and outreach programs of the Alcohol, Drug Abuse, and Mental Health Administration, including the Office of Treatment Improvement, Office of Substance Abuse Prevention, and the National Institute of Drug Abuse, especially those concerned with injecting drug users, their sexual partners and prostitutes; (8) HRSA Education and Training Centers Grants; (9) grants concerned with mothers and children funded by the National Institute of Child Health and Human Development, National Institutes of Health (NIH); (10) the clinical drug trials or other relevant research conducted by other institutes of the NIH, such as the NIH Clinical Trials Groups, NIH Community Programs for Clinical Research on AIDS, and the General Clinical Research Centers; and (11) discretionary grants by the Office of Human Development Services to demonstrate innovative approaches to providing child welfare services for infants with AIDS.

To the maximum extent possible, HRSA's Pediatric AIDS Health Care Demonstration Program grantees also will be expected to work closely with community-based AIDS service organizations, local AIDS service activities supported by the Robert Wood Johnson Foundation, or other foundations and organizations with AIDS activities. All grantees located in the 16 high priority metropolitan areas that presently meet the eligibility standard of 2601(a) of the PHS Act, as identified in the Ryan White C.A.R.E. Act are expected to seek representation on the C.A.R.E. Planning Councils, either as individual grantees or through agency representation.

The NIH supports a number of studies involving women and children with HIV infection. It is especially important that the Pediatric AIDS Health Care Demonstration Projects located in the same geographic areas as the research studies facilitate appropriate access to the studies for the women and children they serve.

### Eligible Applicants

Public and nonprofit and for-profit private entities are eligible to apply for these grant awards. Eligible entities include public or private hospitals, university medical centers, State or local health departments, health care and community organizations. Consistent with the statutory purpose of improving the system of services for women with HIV infection, children, youth, and families and with particular attention to the needs of minority and disadvantaged populations, the Department will review applications for funds under the above mentioned cateogries as competing applications and will fund those which, in the Department's view, best address applicable Healthy People 2000 objectives and otherwise promote improvements in health.

### Review and Evaluation Criteria

Grant applications will be reviewed and rated by objective review panels according to each applicant's ability to demonstrate the most effective ways of organizing services and providing treatment and support to children and women of childbearing age with HIV infection, AIDS or AIDS-related conditions, or those at risk for developing infection and its consequences. Applicants will be expected to demonstrate how proposed programs will be integrated with other AIDS service programs and indicate how the proposed services will augment existing activities.

The second category, National Issues of High Priority in Pediatric AIDS, will be reviewed to assess the importance of the issue selected, the applicant's understanding of the state of the knowledge about the issue, and the applicant's capacity to perform the activities proposed.

More detailed information on the review and evaluation criteria may be found in the Program Guidance.

### Allowable Costs—Both Categories

The basis for determining the allowability and allocability of costs charged to PHS grants is set forth in 45 CFR part 74, subpart Q and 45 CFR 92 for State and local governments. These regulations implement the five separate sets of cost principles prescribed for grant recipients, which are: OMB circular A–87 for State and local governments; OMB circular A–21 for institutions of higher education; 45 CFR part 74, appendix E for hospitals; OMB circular A–122 for nonprofit organizations; and 48 CFR chapter 1, subpart 31.2 for for-profit (commercial) organizations. All sources of funding to support the organizations that will work with the grantee must be accurately reflected in the applicant's budget.

### Reporting Requirements

A successful applicant under this notice will submit reports in accordance with the provisions of the general regulations which apply under 45 CFR part 74, subpart J, Monitoring and Reporting of Program Peformance, with the exception of State and local governments to which 45 CFR part 92, subpart C reporting requirements will apply.

### Executive Order 12372

The Pediatric AIDS Health Care Demonstration Program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies, as implemented by 45 CFR part 100. Exeuctive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice (Form PHS 5161–1 with revised face sheet HHS Form 424 and with Program Narrative and Checklist approved under OMB 0937–0189) will contain a listing of States which have chosen to set up such a review system and will provide a single point of contact (SPOC) in the

States for review. Applicants (other than federally-recognized Indian tribal governments) should contact their State SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date. (See part 148, Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements.)

(The OMB Catalog of Federal Domestic Assistance number for the Pediatric AIDS Health Care Demonstration Program is 93.153.)

Dated: January 28, 1991.

**Robert G. Harmon,**

*Administrator.*

[FR Doc. 91-6035 Filed 3-12-91; 8:45 am]

BILLING CODE 4160-15-M

## National Institute on Aging

### Notice of Meeting of the National Commission on Sleep Disorders Research

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Commission on Sleep Disorders Research, National Institute on Aging. On March 21, 1991 there will be a working meeting of the Commission which will include review of the public testimony and the development of the National Plan. The meeting will take place in room 905, from 4 p.m. to 7 p.m. at the Houston Plaza Hilton, 6633 Travis St., Houston, Texas, 713-524-6633. Attendance by the public will be limited to space available. On March 22, 1991, from 8:30 a.m. to 4:30 p.m., there will be a public hearing in the Charles P. Rhinehart Auditorium, corner of Cleburne & Ennis at the Texas Southern University, 3100 Cleburne, Houston, Texas. The meeting on March 22 will be open to the public from 8:30 a.m. to 4:30 p.m. The Commission will meet to receive testimony and comments from expert and lay witnesses in sleep disorders, with particular emphasis on sleep disorders in the workplace and in the transportation industries. Attendance by the public will be limited to space available. For additional information, please call William C. Dement, M.D., Ph.D., Chairman, National Commission on Sleep Disorders Research, at the Standford University Sleep Disorders Center, 701 Welch Road, suite 2226, Palo Alto, CA, 415-725-6484. Interested persons should contact Andrew Monjan, Ph.D., M.P.H., Executive Secretary, National Commission on Sleep Disorders Research, 9000 Rockville Pike, Building 31C, room 5C35, Bethesda, Maryland, 301-496-9350, for further details and substantive information on the meetings.

Dated: March 11, 1991.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 91-6193 Filed 3-13-91; 8:45 am]

BILLING CODE 4140-01-M

## Public Health Service

### President's Council on Physical Fitness and Sports

**AGENCY:** Office of the Assistant Secretary for Health, HHS.

**ACTION:** Notice of meeting.

This notice sets forth the schedule for the forthcoming subcommittee meeting of the President's Council on Physical Fitness and Sports to be held April 8, 1991—9 a.m.-4 p.m. The meeting is open to the public.

The purpose of this meeting is to review further the mission, goals and objectives of the Council.

**ADDRESS:** Securities and Exchange Commission 450 5th Street, NW., room 1C30, Washington, DC 20001.

Date: March 8, 1991.

**Wilmer D. Mizell,**

*Executive Director, President's Council on Physical Fitness and Sports.*

[FR Doc. 91-5976 Filed 3-13-91; 8:45 am]

BILLING CODE 4160-17-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Environment and Energy

**[Docket No. I-91-160]**

### Environmental Impact Statement Marina Development Project; Village of Port Chester, NY

The Department of Housing and Urban Development gives notice that the Village of Port Chester, New York has prepared an Environmental Impact Statement (EIS) for the Marina Development Project as described in the appendix of this notice. This notice is in accordance with regulations of the Council on Environmental Quality under its rule (40 CFR part 1500).

Interested individuals, governmental agencies, and private organizations are invited to obtain a copy of the EIS or review it at the address indicated in the appropriate of the appendix.

This notice shall be effective until thirty (30) days after this date of publication.

Dated: March 8, 1991.

**Richard H. Broun,**

*Director, Office of Environment and Energy.*

**Appendix**

The Village of Port Chester, New York has prepared an environmental Impact Statement (EIS) on a project described below and invite interested parties to view and/or obtain a copy thereof.

*Description*

The Project is located on a 23-acre site in the downtown area of the Village of Port Chester. The project consists of the construction and rehabilitation of commercial and residential structures comprising the following uses: 165,000 square feet of retail; 40,000 square feet of cinema; 80,000 square feet of office; 30,000 square feet of executive park; 660 apartments and parking for 1887 cars. The project also includes development of a waterfront esplanade and park, expansion of public boating facilities, and changes to the street system.

The project site is generally bounded by North Main Street to the west, the Byram River to the east, Westchester and Purdy Avenues to the south and Willett Avenue of the north.

The project is divided into two phases. Generally, Phase I would be comprised of the commercial development while the residential development would occur in Phase II. It is projected that Phase I construction would be completed no earlier than 1991, while Phase II would be completed no earlier than 1995.

*Potential Environmental Impacts and Mitigation*

The following items have been identified in the EIS as being principal potential environmental impacts:

1. Change in the character of the Area. The project site, which currently supports vacant and predominantly underutilized property, will be altered to support new commerical, high-rise residential buildings and public waterfront amenities.

2. Traffic. The proposed project will result in the generation of significant additional traffic volumes with the most cars added during the midday Saturday. Changes to the existing system will also impact circulation patterns.

3. Traverse/Townsend/Purdy Neighborhood. This neighborhood will be impacted by the proposed construction of new buildings along the southern side of Westchester Avenue and the elimination of through vehicular (and pedestrian) traffic circulation between this neighborhood and the new development.

4. Discrete Soil Contamination. Measurable levels of soil contamination have been observed within discrete areas of the project site. Further testing and a mitigation plan is being developed in consultation with NYS DEC.

5. Displacement. The proposed project would result in the displacement of six (6) households and fourteen (14) businesses.

6. Construction Impacts. Typical construction related impacts including, but not limited to temporary road closings and reroutings, inconvenience to local businesses, soil erosion, construction noise, reduced air quality, etc. will occur as a result of the project.

In addition to the principal potential environemntal impacts described above, the following categories of potential impacts were also analyzed in the EIS, flooding, groundwater, wildlife habitats, vegetation, runoff, density, land use, circulation, open space, recreation parking, adjacent areas, utilities, shoreline interface, historical, archaeological, noise quality, air quality, visual, and socio-economic.

The follwing mitigating measures have been identified in the EIS:

1. Widening of street pavement on Traverse Avenue and Townsend Street to facilitate two-way traffic flow on both streets.

2. Provision of emergency access linkage between Traverse and Townsend.

3. Prohibition of on-street day time parking on Townsend Street.

4. Limitation of cement truck traffic to and from Byram Concrete to Townsend Street.

5. Provision of 12 affordable units of housing on Traverse Avenue to reinforce the residential nature of this street.

6. Provision of off-street parking to serve residents and businesses on Townsend Street.

7. Provision of a play area to serve residential uses in the Townsend-Traverse area.

8. Relocation of the Carver Center to provide an improved neighborhood focus.

9. Provision of pedestrian access from Traverse Avenue to Brick Oven Road and Westchester Avenue.

Copies of this EIS may be obtained from: Thomas J. Farrell, Director, Village of Port Chester, Office of Planning and Development, 125 North Main Street, Port Chester, NY 10573; (914) 937-6452.

(A fee for reproduction and mailing expenses will be collected.)

[FR Doc. 91-6050 Filed 3-13-91; 8:45 am]
BILLING CODE 4210-29-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Availability of a Draft Environmental Assessment and Receipt of an Application for an Incidental Take Permit for Development in Las Vegas Valley, Clark County, NA

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** Clark County and the Cities of Las Vegas, North Las Vegas, Henderson, and Boulder City (applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10 (a)(1)(B) of the Endangered Species Act (Act). The proposed permit would authorize, for a period of 3 years, the incidental take of a threatened species, the Mojave desert tortoise (*Gopherus agassizii*), in the Las Vegas Valley, Clark County, Nevada. The Service also announces the availability of a draft environmental assessment (EA) for the incidental take permit application. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

**DATES:** Written comments on the permit application and EA should be received on or before April 15, 1991.

**ADDRESSES:** Persons wishing to review the application may obtain a copy by writing the Office of Management Authority. Persons wishing to review the draft EA may obtain a copy by writing the Office of Management Authority or the Reno Field Station. Documents will be available by written request for public inspection, by appointment, during normal business hours at the Office of Management Authority or the Reno Field Station. Documents will also be available for review at the reference desks of all public libraries in Clark County. Written data or comments concerning the application and EA should be submitted to the Office of Management Authority. Please reference permit number PRT-756260 in your comments.

Office of Management Authority, U.S. Fish and Wildlife Service, Room 430, 4401 N. Fairfax Dr., Arlington VA 22033 (703/358-2104 or FTS 921-2104).

Reno Field Station, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C-125, Reno, NV 89502-5093 (702/784-5227 or FTS 470-5227).

**FOR FURTHER INFORMATION CONTACT:** Ms. Sheryl L. Barrett at the above Reno Field Station.

**SUPPLEMENTARY INFORMATION:** Clark County and the cities of Las Vegas, North Las Vegas, Henderson, and Boulder City (applicants) propose to develop up to 22,352 acres of land in Las Vegas Valley over a 3-year period. The permit area covers approximately 299,700 acres, of which about 200,000 acres are privately owned lands. Over 90,000 acres of these private lands contain existing urban developent. In general, the permit area includes lands within the cities of Las Vegas, North Las Vegas, Henderson, and Boulder City; the unincorporated towns of Sunrise Manor, East Las Vegas, Winchester, Paradise, and Spring Valley; and portions of the unincorporated areas of Lone Mountain and Enterprise. The application includes a short-term habitat conservation plan (HCP) and a draft implementation agreement.

To minimize and monitor this incidental take, the applicants propose to survey project sites and remove tortoises prior to grading; place these tortoises in research, relocation, education, zoo, museum, adoption programs, and if necessary euthanize them; audit and report compliance to the Service; and conduct a public information program. To mitigate the impacts of incidential take, the applicants propose to conserve at least 400,000 acres of tortoise habitat on 14 potential tortoise management areas (PTMAs). The PTMAs are all located outside of the permit area, primarily on federally owned lands administered by the Bureau of Land Management or the National Park Service. The proposal also provides for ongoing maintenance, patrol, and a biological program; and a $550 per acre mitigation fee on projects covered by the permit.

The EA considers the environmental consequences of three alternatives, including the proposed action and the no action alternative. The proposed action would result in the extirpation of remnant populations of desert tortoises on up to 22,352 acres of habitat in the permit area. Although the no action alternative would not permit the take of desert tortoises in the permit area, it would promote development outside of the existing urban core and eliminate the opportunity to implement conservation measures on a scale not possible through individual projects or

by individual federal agencies. Existing human activities within Las Vegas Valley already preclude the long-term maintenance of desert tortoise populations within the Valley. The third alternative would preserve all of the components of the proposed action, but designates a specific Tortoise Management Area. This alternative would allow a management plan to be designed which considers the impacts on the tortoise population and management and research needs particular to that area. However, this alternative limits the area from which grazing permits could be purchased, which may prevent the applicants from meeting the conservation threshold requirements and establishment of 400,000 acres of conserved habitat. Three other alternatives were rejected due to their inability to meet the growth needs of Las Vegas Valley or provide for conservation measures for the desert tortoise; administrative difficulties; and inability of land managers to guarantee land use controls.

Karen Rosa,

*Acting Chief, Branch of Permits, U.S. Office of Management Authority.*

[FR Doc. 91-5973 Filed 3-13-91; 8:45 am]

BILLING CODE 4310-55-M

## Bureau of Land Management

[WO-680-1-4130-02]

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act (44 U.S.C. Chapter 35)

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004-0114), Washington, DC 20503, telephone 202-395-7340.

*Title:* Recording Location Notices and Annual Filings for Mining Claims, Mill Sites, and Tunnel Sites.

*OMB approval number:* 1004-0114.

*Abstract:* The information collected is used to determined whether or not mining claimants have met the statutory requirements of section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744). Mining claimants must record location notices of mining claims, mill sites, and tunnel sites with the Bureau of Land Management within 90 days of their location. Each calendar year after the claims and sites are located, the claimants must make an annual filing by December 30. Failure to record the mining claim or site or to submit an annual filing makes the mining claim or site abandoned and void by operation of law.

*Bureau Form Number:* None.

*Frequency:* Once for notices and certificates of location. Once each year for annual filings.

*Description of respondents:* Respondents may range from an individual to multi-national corporations.

*Estimated completion time:* 0.0833 hours for each mining claim.

*Annual responses:* 1,063,780.

*Annual burden hours:* 88,613.

*Bureau Clearance Officer (Alternate):* Gerri Jenkins, (202) 653-8853.

Dated: February 4, 1991.

Hillary A. Oden,

*Assistant Director, Energy and Mineral Resources.*

[FR Doc. 91-6091 Filed 3-13-91; 8:45 am]

BILLING CODE 4310-84-M

## Bureau of Land Management; Montana

[MT-070-00-4320-12-ADVB]

### District Grazing Advisory Board Meeting

**AGENCY:** Bureau of Land Management, Butte District Office.

**ACTION:** Notice of meeting.

**SUMMARY:** A meeting of the Butte District Grazing Advisory Board will be held Tuesday, April 9 in the conference room of the Butte District Office, 106 North Parkmont, Butte, Montana. The meeting will begin at 9 a.m. On the agenda will be (1) a rundown of currently funded range improvement projects; (2) proposed range improvement projects for FY 1992; (3) an overview of the Dillon Resource Management Plan; (4) a status report of Allotment Management Plans and evaluations being prepared and in planning; (5) a discussion of district efforts to increase meaningful involvement of interested parties in significant rangeland decisions; (6) a report on the Sleeping Giant horse roundup and plans for bighorn sheep reintroduction; (7) a discussion of this year's moisture conditions; and (8) and overview of Range Program Summaries prepared for the three resource areas.

The meeting is open to the public. Interested persons may make oral statements to the board or file written statements for the board's consideration. Anyone wishing to make oral statements should make prior arrangements with the district manager. Summary minutes of the meeting will be maintained in the district office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

**FOR FURTHER INFORMATION CONTACT:** James R. Owings, District Manager, Butte District, Bureau of Land Management, Box 3388, Butte, Montana 59702.

Dated: March 5, 1991

Orval L. Hadley,

*Acting District Manager.*

[FR Doc. 91-6092 Filed 3-13-91; 8:45 am]

BILLING CODE 4310-DN-M

[NM-030-01-4320-14]

### Las Cruces District Grazing Advisory Board Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The meeting will be held at the Las Cruces District Office located at 1800 Marquess, Las Cruces, New Mexico. The agenda for the meeting follows:

1. 9 a.m.—Meeting Called to Order.
2. 9:05 a.m.—Election of Officers.
3. 9:30 a.m.—Approval of Minutes.
4. 10 a.m.—New Policy Initiative.
5. 10:30 a.m.—Discussion of the Inspector General Audit.
6. 11 a.m.—Discussion of Fencing Standards.
7. 11:30 a.m.—Presentation of New Projects.
8. 12 noon—Lunch.
9. 1 p.m.—Resume Presentation of Projects.
10. 2 p.m.—Public Comment Period.
11. 2:15 p.m.—Finish Presentation of Projects.
12. 4:30 p.m.—Adjourn Meeting.

**MEETING DATE:** April 10, 1991, beginning at 9 a.m.

**FOR FURTHER INFORMATION CONTACT:** H. James Fox, District Manager, Las Cruces District, Bureau of Land Management, 1800 Marquess, Las Cruces, New Mexico or at (505) 525-8228.

Dated: March 7, 1991.

**H. James Fox,**

*District Manager.*

[FR Doc. 91-6093 Filed 3-13-91; 8:45 am]

BILLING CODE 4310-FB-M

## Minerals Management Service

## Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the availability of environmental documents prepared for OCS mineral proposals on the Gulf of Mexico OCS.

**SUMMARY:** The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces that availability of NEPA-related Environmental Assessments (EA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

| Activity/Operator | Location | Date |
|---|---|---|
| Santa Fe International Corporation, Pipeline Activity, SEA No. OCS-G 12690. | High Island Area, East Addition, South Extension, Blocks A-384, A-385, A-396, A-397, and A-402; Garden Banks Area, Blocks 224, 180, and 136; Lease OCS-G 12690, 114 miles southeast of the nearest coastline in Texas. | 12/17/90 |
| Marathon Oil Company, four exploratory wells, SEA No. N-3936 | High Island Area, East Addition, South Extension, Block A-386, Lease OCS-G 9159, 118 miles south of Jefferson County, Texas. | 1/10/91 |
| GFS Company, Geophysical Exploration for Mineral Resources, SEA No. L90-052. | Vermilion Area, Blocks 28 and 33, located approximately 9 miles offshore Louisiana. | 10/23/90 |
| Oryx Energy Company, two exploratory wells, SEA No. R-2600 | High Island Area, East Addition, South Extension, Blocks A-378 and A-379, Leases OCS-G 8573 and 8574, 108 miles southeast of the nearest coastline on Galveston Island, Texas. | 12/6/90 |
| Conoco Inc., structure removal operations, SEA No. ES/SR 89-013 | West Cameron Area, Block 177, Lease OCS-G 1471, 34 miles southeast of Cameron, Louisiana. | 11/5/90 |
| Conoco Inc., structure removal operations, SEA No. ES/SR 89-038A | Vermilion Area, Block 22, Lease OCS-G 2865, 8 miles south of Vermilion Parish, Louisiana. | 10/5/90 |
| Texaco USA, structure removal operations, SEA No. ES/SR 90-010/S | Eugene Island, South Addition, Block 338, Lease OCS-G 2118, approximately 90 miles south of St. Mary Parish, Louisiana. | 10/17/90 |
| Texaco USA, structure removal operations, SEA Nos. ES/SR 90-11/S and 90-12/S. | West Cameron Area, Block 663, Lease OCS-G 6613, approximately 132 miles south of Cameron Parish, Louisiana. | 10/16/90 |
| Texaco USA, structure removal operations, SEA No. ES/SR 90-13/S | Matagorda Island Area, Block 554, Lease OCS-G 6033, approximately 15 miles south of Matagorda County, Texas. | 10/15/90 |
| CNG Producing Company, structure removal operations, SEA No. ES/SR 90-14/S. | South Marsh Island Area, Block 65, Lease OCS-G 7702, 52 miles south of Shell Keys National Wildlife Refuge in Iberia Parish, Louisiana. | 10/30/90 |
| Seagull Energy E&P Inc., structure removal operations, SEA No. ES/SR 90-019A. | Galveston Area, Block 213, Lease OCS-G 4142, approximately 13 miles southeast of Galveston, Texas. | 8/21/90 |
| Mesa Operating Limited Partnership, structure removal operations, SEA No. ES/SR 90-057. | Vermilion Area, South Addition, Block 381, Lease OCS-G 4216, approximately 5 miles south of Rockefeller Refuge in Cameron Parish, Louisiana. | 11/9/90 |
| OXY USA, structure removal operations, SEA No. ES/SR 90-060 and 90-065. | High Island Area, South Addition, Block A-520, Lease OCS-G 2378, approximately 108 miles south of Cameron Parish, Louisiana. | 6/29/90<br>9/26/90 |
| Exxon Company, U.S.A., structure removal operations, SEA No. ES/SR 90-071. | Grand Isle Area, Block 22, Lease OCS 031, approximately 9 miles south of Lafourche Parish, Louisiana. | 9/26/90 |
| Chevron U.S.A., structure removal oeprations, SEA No. ES/SR 90-072 | West Delta Area, Block 24, Lease OCS 0691, 12 miles southwest of Venice, Louisiana. | 10/11/90 |
| Unocal Exploration Corporation, structure removal operations, SEA No. ES/SR 90-085. | South Timbalier Area, Block 53, Lease OCS-G 4000, 12 miles south of the barrier island chain in Terrebonne Parish, Louisiana. | 10/5/90 |
| Mobil Exploration & Producing U.S. Inc., structure removal operations, SEA Nos. ES/SR 90-087, 90-088, and 90-089. | Vermilion Area, Block 23, Lease OCS-G 2666, 5 miles south of Vermilion Parish, Louisiana. | 10/12/90 |
| Diamond Shamrock Offshore Partners Limited Partnership, structure removal operations, SEA No. ES/SR 90-094. | Main Pass Area, Block 39, Lease OCS-G 4904, 16 miles southeast of Breton Islands and the Breton National Wildlife Refuge, offshore Louisiana. | 10/3/90 |
| Union Pacific Resources, structure removal operations, SEA No. ES/SR 90-099. | Ship Shoal Area, Block 184, Lease OCS-G 5553, 34 miles south of Terrebonne Parish, Louisiana. | 9/7/90 |
| Phillips Petroleum Company, structure removal operations, SEA No. ES/SR 90-100. | West Cameron Area, South Addition, Block 480, Lease OCS-G 2219, 66 miles south of Cameron Parish, Louisiana. | 10/10/90 |
| Unocal Exploration Corporation, structure removal operations, SEA No. ES/SR 90-102. | East Cameron Area, Block 89, Lease OCS-G 0935, 24 miles south of the Rockefeller Refuge in Cameron Parish, Louisiana. | 11/9/90 |
| Unocal Exploration Corporation, structure removal operations, SEA Nos. ES/SR 90-103, 90-104, and 90-105. | Vermilion Area, Blocks 35, 36, and 26; Leases OCS 0549, OCS-G 1357, and OCS 0297; approximately 4 to 6 miles south of Vermilion Parish, Louisiana. | 10/10/90 |
| BP Exploration, structure removal operations, SEA Nos. ES/SR 90-106 and 90-107. | Main Pass Area, Blocks 99 and 100, Leases OCS-G 6807 and OCS-G 4910, approximately 46 miles east of St. Bernard Parish, Louisiana. | 12/12/90 |
| Norcen Explorer, Inc., structure removal operations, SEA No. ES/SR 90-108. | Eugene Island Area, Block 29, Lease OCS-G 5038, 5 miles southwest of the Atchafalaya Bay Wildlife Management Area in St. Mary Parish, Louisiana. | 11/5/90 |
| Phillips Petroleum Company, structure removal operations, SEA No. ES/SR 91-001. | Ship Shoal Area, Block 26, Lease OCS-G 5530, approximately 10 miles south of Terrebonne Parish, Louisiana. | 10/19/90 |
| Placid Oil Company, structure removal operations, SEA Nos. ES/SR 91-02S and 91-03S. | Ship Shoal Area, South Addition, Blocks 290 and 291, Leases OCS-G 3170 and 2923, approximately 62 miles south of Terrebonne Parish, Louisiana. | 12/7/90 |
| Koch Exploration Company, structure removal operations, SEA Nos. ES/SR 91-002 and 91-003. | East Cameron Area, Blocks 219 and 233, Leases OCS-G 7652 and OCS-G 9460, 65 miles south of Cameron Parish, Louisiana. | 11/30/90 |

| Activity/Operator | Location | Date |
|---|---|---|
| Union Pacific Resources, structure removal operations, SEA No. ES/SR 91-04/S. | Galveston Area, Block 226, Lease OCS-G 10241, 17 miles southeast of Galveston Island in Galveston County, Texas. | 12/21/90 |
| Marathon Oil Company, structure removal operations, SEA No. ES/SR 91-05/S. | West Delta Area, Block 89(G), Lease OCS-G 7791, 12 miles west of Plaquemines Parish, Louisiana. | 12/21/90 |
| Odeco Oil and Gas Company, structure removal operations, SEA Nos. ES/SR 91-004 and 91-005. | Ship Shoal Area, Blocks 93 and 94, Leases OCS 063 and OCS 042, 16 miles south of Terrebonne Parish, Louisiana. | 11/2/90 |
| Mobil Exploration & Producing U.S. Inc., structure removal operations, SEA No. ES/SR 91-006. | Ship Shoal Area, Block 72, Lease OCS 060, 9 miles south of Terrebonne Parish, Louisiana. | 11/21/91 |
| Chevron U.S.A., structure removal operations, SEA No. ES/SR 91-06/S | East Cameron Area, Block 235 Lease OCS-G 5386, 69 miles south of Cameron Parish, Louisiana. | 1/11/91 |
| Pennzoil Exploration and Production Company, structure removal operations, SEA No. ES/SR 91-007. | Eugene Island Area, Block 53, Lease OCS 0479, 18 miles south of St. Mary Parish, Louisiana. | 1/11/91 |
| Mobil Exploration & Producing U.S. Inc., structure removal operations, SEA ES/SR 91-012. | West Cameron Area, Block 101, Lease OCS 0246, 12 miles south of Cameron Parish, Louisiana. | 1/23/91 |

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

**FOR FURTHER INFORMATION CONTACT:** Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, Telephone (504) 736-2519.

**SUPPLEMENTARY INFORMATION:** The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources and structure removals on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in signficant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: March 6, 1991.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 91-6094 Filed 3-13-91; 8:45 am]

BILLING CODE 4310-MR-M

## Bureau of Mines

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1032-0004), Washington, DC 20503, telephone 202-395-7340.

*Title:* Nonferrous Metals Surveys.

*OMB approval number:* 1032-0004.

*Abstract:* Respondents supply the Bureau of Mines with domestic production and consumption data on nonfuel mineral commodities. This information is published in Bureau of Mines publications including the Mineral Industry Surveys, Volumes I, II, and III of the Minerals Yearbook, and Mineral Commodity Summaries for use by private organizations and other Government agencies.

*Bureau form number:* 6-1151-MA et al. (33 forms).

*Frequency:* Monthly, Quarterly, and Annual.

*Description of respondents:* Producers and Consumers of Nonferrous Metals.

*Annual responses:* 12,181.

*Annual burden hours:* 14,371.

*Bureau clearance officer:* Alice J. Wissman, 202-634-1125.

Dated: February 26, 1991.

**T.S. Ary,**

*Director, Bureau of Mines.*

[FR Doc. 91-6095 Filed 3-3-91; 8:45 am]

BILLING CODE 4310-53-M

## Bureau of Reclamation

### Operation of Glen Canyon Dam, Colorado River Storage Project, Arizona

**AGENCY:** Bureau of Reclamation (Interior).

**ACTION:** Notice of public meetings and notice of correction.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, the Department of the Interior previously announced it is preparing a draft environmental impact statement (DEIS) on the downstream impacts of water releases from the Glen Canyon Dam. Public meetings will be held to present the alternatives developed through the scoping process.

The cooperating agencies will conduct three public meetings to be held in Flagstaff and Phoenix, Arizona, and Salt Lake City, Utah. On February 23, 1990, the Bureau of Reclamation (Reclamation), the lead agency in the development of the EIS, published a **Federal Register** notice (55 FR 6488) that listed the cooperating agencies in the process. The list of cooperating agencies is changed to read: "Cooperating agencies are the U.S. Fish and Wildlife Service, National Park Service, and the Bureau of Indian Affairs, of the Department of the Interior, Western Area Power Administration of the Department of Energy, Arizona Game and Fish Department, the Navajo Nation, the Hopi Tribe, the Havasupai Tribe, and the Hualapai Tribe."

**DATES AND LOCATIONS:** Three public meetings will be held:

April 1, 1991, 7 p.m., Hilton Hotel, 150 W. 500 South, Salt Lake City, Utah.

April 2, 1991, 7 p.m., Little America Hotel, 2515 East Butler Avenue, Flagstaff, Arizona.

April 4, 1991, 7 p.m., YWCA Leadership Development Center, 9440 North 25th Avenue, Phoenix, Arizona.

**FOR FURTHER INFORMATION CONTACT:** Mary Ann Facer, Colorado River Studies Office, UC-1512, U.S. Bureau of Reclamation, 125 South State Street, P.O. Box 11568, Salt Lake City UT 84147, telephone: (801) 524-4099.

**SUPPLEMENTARY INFORMATION:** In addition to this notice, interested government agencies, public groups, and private citizens will be informed of the alternative measures through the Colorado River Studies Office (CRSO) newsletter and news releases. Basic information on the alternatives and the public involvement process will be contained in the newsletter which will be published prior to the meetings. A document listing preliminary alternatives will be provided at the meetings and will also be available on request. The public meetings will be held in a workshop style. In addition, written comments will be accepted at the meetings. Written comments can also be submitted by mail or in person through May 1, 1991. Persons may be added to the current DEIS mailing list to receive the newsletter or additional information by contacting the person noted above. Commetns should be sent to the same address.

On October 27, 1989, Reclamation published a Notice of Intent in the **Federal Register** (54 FR 43870) to prepare a DEIS which would be used to evaluate the impacts of Glen Canyon Dam operations on the downstream environmental and ecological resources of the Glen Canyon National Recreation Area and Grand Canyon National Park. The notice was amended in the **Federal Register** notice (55 FR 6488) dated February 23, 1990, to state "The final environmental impact statement (FEIS) will be filed in December 1991." The previous notice is again amended to read "The final environmental impact statement (FEIS) will be filed in September of 1993."

The draft environmental impact statement will be available in July of 1992. This schedule change is necessary to better incorporate information from research studies currently underway.

Dated: February 27, 1991.

**Joe D. Hall,**

*Deputy Commissioner.*

[FR Doc. 91-6027 Filed 3-13-91; 8:45 am]

BILLING CODE 4310-09-M

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337-TA-319]**

### Certain Automotive Fuel Caps and Radiator Caps and Related Packaging and Promotional Materials; Change of Commission Investigative Attorneys

Notice is hereby given that, as of this date, Linda C. Odom, Esq. and John R. Kroeger, Esq., of the Office of Unfair Import Investigations are designated as the Commission investigative attorneys in the above-cited investigation instead of Gary M. Hnath, Esq. and Linda C. Odom, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Respectfully submitted,

Dated: March 4, 1991.

**Lynn I. Levine,**

*Director, Office of Unfair Import Investigations.*

[FR Doc. 91-6071 Filed 3-13-91; 8:45 am]

BILLING CODE 7020-02-M

## DEPARTMENT OF JUSTICE

### Antitrust Division

**[Civil No. 90-00904 DAE Stipulation]**

### Proposed Final Judgment, Stipulation and Competitive Impact Statement, First Hawaiian, Inc., and First Interstate of Hawaii, Inc.

Notice is hereby given that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Hawaii in *United States* v. *First Hawaiian, Inc., and First Interstate of Hawaii, Inc.*, Civil Action No. 90-00904 DAE. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h).

The Complaint in this case alleged that the proposed acquisition of First Interstate of Hawaii, Inc. by First Hawaiian, Inc. would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18, in the markets for business banking services in Honolulu County; East Hawaii; West Hawaii; Kauai; and Maui.

The proposed Final Judgment directs the defendants to relinquish the "First Interstate System" franchise held by First Interstate and to sell designated bank branches in each geographic market.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Constance K. Robinson, Chief, Communications and Finance Section, Antitrust Division, Room 8104, 555 Fourth Street, NW., Washington, DC 20001, (202-514-5621).

**John W. Clark,**

*Acting Director of Operations, Antitrust Division.*

**Stipulation**

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. The parties shall abide by and comply with the provisions of the Final Judgment pending entry of the Final Judgment.

3. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation will be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: Honolulu, Hawaii.

For the Plaintiff:

Daniel Bent,

*United States Attorney, District of Hawaii.*

Marshall Silverberg,

*Assistant U.S. Attorney.*

Of Counsel for the Plaintiff:

James F. Rill,

*Assistant Attorney General.*

Alison L. Smith,

*Deputy Assistant Attorney General.*

John W. Clark,
*Deputy Director of Operations.*
Constance K. Robinson,
*Chief, Communications & Finance Section.*
U.S. Department of Justice, Antitrust Division, Washington, DC 20001.
Patricia A. Shapico,
Laury E. Bobbish,
Jennifer L. Otto,
*Attorneys.*
U.S. Department of Justice, Antitrust Division, Judiciary Center Building, 555 4th Street, NW., Washington, DC 20001, (202) 514–5796.

Counsel for the Defendants: First Hawaiian, Inc.
Garret G. Rasmussen,
Daniel H. Margolis,
*Patton, Boggs & Blow, 2550 M Street, NW., Washington, DC 20037.*
Wallace S. Fujiyama,
James E. Duffy, Jr.,
*Fujiyama, Duffy & Fujiyama, suite 2700, 1001 Bishop Street, Honolulu, HI 96813.*
First Interstate of Hawaii, Inc.
John A. Herfort,
*Gibson, Dunn & Crutcher, 200 Park Avenue, 47th Floor, New York, NY 10166.*
Neal K. Okabayashi,
*First Interstate Bank of Hawaii, Legal Department, 1314 South King Street, Honolulu, HI 96814.*

## Final Judgment

*Whereas,* Plaintiff, United States of America, having filed its Complaint herein on December 28, 1990, defendants having filed their respective answers to the Complaint on January 17, 1991, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

*And whereas,* defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

*And whereas,* prompt and certain termination of the First Interstate System franchise and divestiture of bank branches are of the essence of this agreement, and defendants have represented to plaintiff that the franchise termination and divestitures required herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the franchise termination or divestiture provisions contained herein;

*Now, therefore,* before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

*Ordered, adjudged and decreed* as follows:

### *I. Jurisdiction*

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

### *II. Definitions*

As used in this Final Judgment: (A) *American Savings Bank* means its successors and assigns, its parents, subsidiaries, affiliates, directors, officers, managers, agents, and employees, and other persons under its direct or indirect control, and any other person acting for or on behalf of it.

B. *Bank of Hawaii* means its successors and assigns, its parents, subsidiaries, affiliates, directors, officers, managers, agents, and employees, any other persons under its direct or indirect control, and any other person acting for or on behalf of it.

C. *Business banking services* means banking services offered to business customers which include at a minimum:

1. Transaction account deposits, *i.e.,* money deposited with a depository institution either at an agreed upon interest rate or at no interest, withdrawable in practice upon demand, and upon which third-party drafts may be drawn by the depositor, including checking accounts and NOW accounts; and

D. *Commercial loans, i.e.,* secured or unsecured loans to businesses, excluding commercial mortgages.

Business banking services may also include additional services such as cash and coin, lockbox, cash management, and business expertise and advice offered to business customers. Business banking services excludes services offered only to individual consumers.

D. *Branch assets* means personal property; cash on hand; the branch loan portfolio; all safe deposit boxes at the branches, exclusive of contents; all prepaid expenses, including security deposits, of the branches, determined in accordance with generally accepted accounting principles, as of the closing date; all rights of defendants to all contracts relating to the branch; all records and original documents in defendants possession pertaining to the leasehold, the personal property, the branch loans, the morgage loans and the nondeposit liabilities; any leasehold; any real estate, buildings, structures, drive-in teller facilities, ATMs, fixtures and improvements thereon which are owned and used by defendants as premises for the branches; and any other assets required for the branch to compete effectively in offering business banking services.

E. *Branch deposits* means liabilities allocated to a branch that constitute the unpaid balance of money or its equivalent received or held by the branch in the usual course of business and for which the branch has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, or thrift account, or which is evidenced by its certificate of deposit, or a check or draft drawn against a deposit account and certified by the branch.

F. *Central Pacific Bank* means its successors and assigns, its parents, subsidiaries, affiliates, directors, officers, managers, agents, and employees, and other persons under its direct or indirect control, and any other person acting for or on behalf of it.

G. *Commercial mortgages* means loans secured by real estate as evidenced by mortgages or other liens on business and industrial properties.

H. *Defendants* means FH and FIHI, either individually or collectively.

I. *FH* means the defendant First Hawaiian, Inc., its successors and assigns, its subsidiaries, affiliates, directors, officers, managers, agents, and employees, and other persons under its direct or indirect control, and any other person acting for or on behalf of it. FH shall include FIHI and any of its assets after such time, if any, as FH acquires FIHI.

J. FI means First Interstate Bancorp or its successors and assigns who own the First Interstate System franchise.

K. *FIHI* means the defendant First Interstate of Hawaii, Inc., its successors and assigns, its subsidiaries, affiliates, directors, officers, managers, agents, and employees, and other persons under its direct or indirect control, and any other person acting for or on behalf of it.

L. *First Interstate System franchise* means a license from FI which includes, among other things (as described more specifically in the franchise agreement), certain identified service marks, trademarks, tradenames and styles including distinctive logos, and certain copyrighted material embodying the use of such marks.

M. *Franchise* or *franchise agreement* means the Agreement dated as of September 20, 1962, with subsequent amendments, by and between FI and American Security Bank (now operating under the name First Interstate Bank of Hawaii) which grants the control and

use of the First Interstate System franchise in the state of Hawaii to FIHI.

N. *Hawaii Kai* means the FIHI office located at 377 Keahole Street, Honolulu, Hawaii 96825 on the island of Oahu.

O. *Hilo* means the First Hawaiian Creditcorp, Inc. office located at 250 Keawe Street, Hilo, Hawaii 96720 on the eastern portion of the island of Hawaii.

P. *Kailua* means the FIHI office located at 30 Aulike Street, Honolulu, Hawaii 96863 on the island of Oahu.

Q. *Kona* means the FIHI office located at 75–5722 Kuakini Highway, Kailua-Kona, Hawaii 96740 on the western portion of the island of Hawaii.

R. *Lahaina* means the FIHI office located at 135 Papalaua Street, Lahaina, Hawaii 96761 on the island of Maui.

S. *Lihue* means the FIHI office located at 4444 Rice Street, Lihue, Hawaii 96766 on the island of Kauai.

T. *Merger* means the Agreement and Plan of Merger Among First Interstate of Hawaii, Inc., First Hawaiian, Inc. and FHI Acquisition Corp. dated as May 11, 1990, with subsequent amendments.

U. *Person* means any natural person, corporation, association, firm; partnership, or other business or legal entity.

V. *Wailuku* means the FIHI office located at 2005 Main Street, Wailuku, Hawaii 96793 on the island of Maui.

*III. Applicability*

A. The provisions of this Final Judgment shall apply to the defendants, to their successors and assigns, to their subsidiaries, affiliates, directors, officers, managers, agents, and employees, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

C. Nothing herein shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

*IV. Termination of Franchise*

A. Defendants are ordered and directed, two (2) business days from the entry date of this Final Judgment, to deliver written termination notice of the franchise to FI. Defendants further agree to deliver a copy of the franchise termination notice on the same date to Constance K. Robinson, Chief, Communications and Finance Section, Antitrust Division, Department of Justice. Defendants are further ordered and directed to relinquish all control of and use of the franchise no later than one (1) year from the delivery date of termination notice to FI.

B. Defendants are further directed and ordered for the duration of their control of the franchise to abide by all contractual obligations under the franchise agreement to maintain the First Interstate System franchise in a manner that will continue to perpetuate the marketability of the franchise to a new franchisee in the state of Hawaii.

C. Defendants are enjoined and restrained from purchasing, attempting to purchase, or engaging in any negotiations to purchase the First Interstate System franchise for use in the state of Hawaii until after the expiration of this Final Judgment.

*V. Divestiture of Branches*

A. Defendants are hereby ordered and directed to divest to a qualified purchaser(s), within sex (6) months of the date of filing of this Final Judgment, all of their direct and indirect ownership and control in the branch assets and deposits identified below. The purchaser(s) shall be independent of FH or FIHI; shall be federally insured financial institution(s) that offer business customers, at a minimum, transaction account deposits and commercial loans; shall deliver promptly to plaintiff following the execution of a binding contract(s), an affidavit from an authorized officer stating a present intention that the branch(s) purchased will offer business banking services in the geographic area currently served by the branch(s); and shall be subject to approval by plaintiff. The obligation to divest shall be satisfied if, within six (6) months of the date of filing of this Final Judgment, defendants enter into a binding contract(s) with qualified purchasers for the sale of the branch assets and deposits at each location listed below to a purchaser(s) according to terms approved by plaintiff that are contingent upon compliance with the terms of this Final Judgment and that specify a prompt and reasonable closing date no later than ten (10) business days after compliance with all federal or state bank regulatory requirements and if the sale is completed pursuant to the contract(s). In the event that any proposed divestiture is denied approval by the Board of Governors of the Federal Reserve System or any other federal or state bank regulatory agency, the time period specified herein in which defendants must complete the sale of the section V.B. branch locations will expire on the six (6) month anniversary date of the filing of this Final Judgment, unless plaintiff under Section V.C. grants additional time.

B. Defendants are hereby ordered and directed to divest:

1. The Hawaii Kai branch assets and deposits on the island of Oahu. The purchaser cannot be Bank of Hawaii or Central Pacific Bank.

2. The Kailua branch assets and deposits on the island of Oahu. The purchaser cannot be Bank of Hawaii or Central Pacific Bank.

3. The Lahaina branch assets and deposits on the island of Maui. The purchaser cannot be Bank of Hawaii, Central Pacific Bank or American Savings Bank, provided, however, that if the defendants do not succeed in selling the Lahaina branch assets and deposits within six (6) months of the date of filing of this Final Judgment, and the sale of the branch assets and deposits is assigned to a trustee under the terms of section VI. of this Final Judgment, Central Pacific Bank is permitted to bid on the Lahaina branch assets and deposits. If the trustee proposes selling the Lahaina branch assets and deposits to Central Pacific Bank, the trustee shall require as a condition of sale that Central Pacific Bank agree not to purchase the First Interstate System franchise for use in the state of Hawaii until after the expiration of this Final Judgment.

4. The Wailuku branch assets and deposits on the island of Maui. The purchaser cannot be Bank of Hawaii, Central Pacific Bank or American Savings Bank.

5. The Kona branch assets and deposits on the island of Hawaii. The purchaser cannot be Bank of Hawaii or American Savings Bank. Plaintiff will not object, provided that the terms of section V. are complied with, to the purchase of the Kona branch assets and deposits by Central Pacific Bank, provided, however, that defendants shall require as a condition of sale that Central Pacific Bank agree not to purchase the First Interstate System franchise for use in the state of Hawaii until after the expiration of this Final Judgment.

6. The Lihue branch assets and deposits on the island of Kauai. The purchaser cannot be Bank of Hawaii, American Savings Bank or Central Pacific Bank, provided, however, that if the defendants do not succeed in selling the Lihue branch assets and deposits within six (6) months of the filing date of this Final Judgment and the sale of the branch assets and deposits is assigned to a trustee under the terms of section VI. of this Final Judgment, Central

Pacific Bank is permitted to bid on the Lihue branch assets and deposits. If the trustee proposes selling the Lihue branch assest and deposits to Central Pacific Bank, the trustee shall require as a condition of sale that Central Pacific Bank agree not to purchase the First Interstate System franchise for use in the state of Hawaii until after the expiration of this Final Judgment.

7. Defendant FH, prior to the filing of this Final Judgment, has entered into a binding contract for the sale of the assets and deposits of the Hilo branch of First Hawaiian Creditcorp on the island of Hawaii, subject only to regulatory approval and the entry of this Final Judgment, to Hawaii National Bank which intends to consolidate the Hilo branch with one of its preexisting branches located in Hilo, Hawaii.

In the event that regulatory approval is denied, the defendants must sell the Hilo branch assets and deposits to a purchaser that will operate the Hilo branch as a branch (or as a branch consolidated with a preexisting branch) that offers business banking services. The purchaser cannot be Bank of Hawaii, American Savings Bank or Central Pacific Bank.

C. If defendants have not accomplished the required divestiture(s), within six (6) months of the filing date of this Final Judgment, plaintiff may, in its sole discretion, extend this time period, separately for each Section V.B branch location, for an additional period of time, if defendants request such an extension and demonstrate to plaintiff's satisfaction for each such branch location that they are then engaged in negotiations with a prospective purchaser(s) that are likely to result in the required divestiture(s) but that the divestiture(s) cannot be completed by the six (6) month anniversary date of the filing of this Final Judgment.

D. Defendants agree to take all reasonable steps to accomplish quickly said divestitures. In carrying out their obligation to divest the branch assets and deposits at each location identified in Section V.B. of this Final Judgment, defendants may divest these branch assets alone, or may divest along with these branch assets any other assets of FH or FIHI.

E. In accomplishing the divestitures (other than the divestiture of the Kona branch assets and deposits to Central Pacific Bank) ordered by this Final Judgment, the defendants promptly after filing of this Final Judgment shall make known in the Wall Street Journal, the American Banker, and in the State of Hawaii, by usual and customary means, the availability of the Section V.B. branch locations, for sale as ongoing branches that offer business banking services. The defendants shall notify any person making an inquiry regarding the possible purchase of any or all of the Section V.B. branch locations that the sale is being made pursuant to this Final Judgment and that this Final Judgment requires approval of this Court. The defendants shall provide any such person with a copy of this Final Judgment. The defendants shall also offer to furnish to all bona fide prospective purchasers of any or all of the Section V.B. branch locations, subject to customary confidentiality assurances, all pertinent information regarding each Section V.B. branch location. Defendants shall provide such information to the plaintiff as soon as possible, but no later than two (2) business days after they furnish such information to any other person. Defendants shall permit prospective purchasers of any or all of the Section V.B. branch locations to have access to personnel at each Section V.B. branch location and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the sale of each Section V.B. branch location. Defendants shall not be required to permit prospective purchasers to have access to any documents or information relevant to defendant's banking business, except to the extent it relates to the Section V.B. branch locations' operations and business. Defendants shall not object to any applications for new bank charters sought to facilitate any divestiture(s).

F. Divestiture required by Section V.B. of this Final Judgment shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion that the purchaser is qualified in the following two respects: (1) The purchaser intends to use the Section V.B. branch location to compete in the provision of business banking services in the geographic area currently served by the branch, and (2) the purchaser has the managerial, operational, and financial capability to compete effectively in the provision of such business banking services.

G. Defendants FH and FIHI shall not acquire or attempt to acquire any branch assets divested pursuant to Section V.B. of this Final Judgment without first receiving prior approval from the plaintiff during the duration of this Final Judgment.

H. Except to the extent otherwise approved by plaintiff, any branch assets divested pursuant to this Final Judgment shall be divested free and clear of (1) All mortgages, encumbrances and liens to FH or FIHI, and (2) any contractual commitments or obligations to FH or FIHI existing as of the date of divestiture, unless plaintiff is satisfied that the purchaser of a divested branch location wishes to voluntarily assume the future performance of any such existing contracts, and plaintiff consents thereto.

*VI. Appointment of Trustee*

A. If defendants have not accomplished the divestiture(s) required by Section V.B. of this Final Judgment by the five (5) month anniversary date of the filing of this Final Judgment, defendants shall notify plaintiff in writing of that fact. Within ten (10) days of that date, or twenty (20) days prior to the expiration of any extension granted pursuant to Section V.C., whichever is later, plaintiff shall provide defendants with written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestitures. Defendants shall notify plaintiff within ten (10) days thereafter whether either or both of such nominees are acceptable. If either or both of such nominees are acceptable to defendants, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither of such nominees is acceptable to defendants, they shall furnish to plaintiff, within ten (10) days after plaintiff provides the names of its nominees, written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestitures. If either or both of such nominees are acceptable to plaintiff, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither of such nominees is acceptable to plaintiff, it shall furnish the Court with the names and qualifications of its proposed nominees and the names and qualifications of the nominees proposed by defendants. The Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

B. If defendants have not accomplished all of the divestiture(s) required by Section V.B. of this Final Judgment at the expiration of the time period specified in sections V.A. or V.C. of this Final Judgment, as applicable, the appointment by the Court of the trustee shall become effective. The trustee shall then take steps to effect divestiture of the not yet divested Section V.B. branch locations according to the terms of this Final Judgment; provided, however, that the appointment of the trustee shall not become effective if, prior to expiration

of the applicable time period, defendants have notified plaintiff pursuant to Section VII. of this Final Judgment of a proposed divestiture(s) of Section V.B. branch locations and plaintiff has not filed a written notice that it objects to said proposed divestiture(s).

C. After the trustee's appointment has become effective, only the trustee shall have the right to sell any section V.B. branch location as to which it has been designated to effect divestiture. The trustee shall have the power and authority to accomplish divestitures to a purchaser(s) acceptable to the plaintiff at such price and on such terms as are then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section VII. of this Final Judgment, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale of the Section V.B. branch locations by the trustee on any grounds other than the trustee's malfeasance. Any such objection by defendants must be conveyed in writing to plaintiff and the trustee within fifteen (15) days after the trustee has notified defendants of the proposed sale in accordance with section VII. of this Final Judgment.

D. The trustee shall serve at the cost and expense of defendants, shall receive compensation based upon a fee arrangement which includes an incentive based upon the price of the divestitures and the speed with which they are acccomplished, and shall serve on such other terms and conditions as the Court may prescribe; provided, however, that the trustee shall receive no compensation, nor incur any costs or expenses, prior to the effective date of his or her appointment. The trustee shall account for all costs and expenses incurred in connection with its assignment in this matter. After approval by the Court of the trustee's accounting, including fees and reasonable expenses for his or her services, all remaining monies shall be paid to defendants and the trust shall then be terminated.

E. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture(s) and shall, if requested by the trustee, use their best efforts to assist the trustee in accomplishing the required divestiture(s). The trustee shall have full and complete access to the personnel, books, records, and facilities of the Section V.B. branch locations which the trustee is designated to divest, and defendants shall develop such financial or other information relevant to the section V.B branch locations being divested as the trustee may request.

F. After its appointment becomes effective, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture(s) as contemplated under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems condfidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted, or made an inquiry about acquiring, any ownership interest in the Section V.B. branch locations, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the Section V.B. branch locations and shall provide additional information to plaintiff upon its request.

G. Within six (6) months after its appointment has become effective, if the trustee has not accomplished the divestiture(s) required by Section V.B of this Final Judgment, the trustee shall promptly file with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why any required divestitures have not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent the report contains information that the trustee deems confidential, the report shall not be filed in the public docket of the Court. The trustee shall at the same time furnish the report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust and the term of the trustee's appointment.

*VII. Notification*

Immediately following execution of a binding contract(s), contingent upon compliance with the terms of this Final Judgment, to effect any proposed divestitures pursuant to Section V. of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestitures, shall notify plaintiff of the proposed divestitures. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transactions and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or desire to, acquire any ownership interest in the Section V.B. branch locations, together with full details of same. Within fifteen (15) days of receipt by plaintiff of such notice, plaintiff may request additional information concerning the proposed divestiture(s) and the proposed purchaser(s). Defendants and/or the trustee shall furnish any additional information requested within twenty (20) days of receipt of the request, unless the parties shall otherwise agree. Within thirty (30) days after receipt of the notice or within twenty (20) days after plaintiff has been provided the additional information requested (including any additional information requested of persons other than defendants or the trustee), whichever is later, plaintiff shall provide written notice to defendants and to the trustee, if there is one, stating whether or not it objects to the proposed divestiture(s). If plaintiff provides written notice to defendants and/or the trustee that it does not object, then the divestiture(s) may be consummated, subject only to defendants' limited right to object to the sale under the proviso in Section VI.C. Upon objection by plaintiff, a divestiture proposed under Section V. shall not be consummated. Upon objection by plaintiff, or by defendants under the proviso in section VI.C., a divestiture proposed under section VI. shall not be consummated unless approved by the Court.

*VIII. Affidavits*

Within five (5) business days of filing of this Final Judgment and every thirty (30) days thereafter until the divestitures have been completed or authority to effect divestitures passes to the trustee pursuant to Section VI. of this Final Judgment, defendants shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Section V. of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any ownership interest in the Section V.B. branch locations, and shall describe in detail each contact with any such person during that period. Defendants shall maintain full records of all efforts made to divest the Section V.B. branch locations.

*IX. Financing*

Defendants shall not finance all or any part of any purchase made pursuant to Sections IV., V. or VI. of this Final Judgment without plaintiff's prior consent.

*X. Preservation of Assets*

Until the relinquishment of control of the franchise and divestiture of the Section V.B. branch locations required by this Final Judgment have been accomplished:

A. The defendants shall take all steps necessary to assure that the Section V.B. branch locations will be maintained as economically viable, ongoing branches that offer business banking services. The defendants shall use all reasonable efforts to maintain the increase sales of business banking services at the Section V.B. branch locations, and continue with any current plans for development of business banking services at those locations.

B. The defendants shall not sell, lease, assign, trasfer or otherwise dispose of, or pledge as collateral for loans, any branch assets required to be divested pursuant to Section V.B., except that any component of such branch assets as is replaced in the ordinary course of business with a newly purchased component may be sold or otherwise disposed of, provided the newly purchased component is so identified as a replacement component for one to be divested.

C. The defendants shall provide capital and provide and maintain sufficient working capital to maintain the Section V.B. branch locations, including funds for commercial lending, as viable, ongoing branches that offer business banking services consistent with the requirements of Section X.A.

D. The defendants shall preserve the First Interstate System franchise required to be relinquished pursuant to Section IV. Defendants shall also preserve the branch assets and deposits required to be divested pursuant to Sections V. and VI., except those replaced with newly acquired branch assets and deposits in the ordinary course of business, in a state of repair equal to their state of repair as of the date of this Final Judgment, ordinary wear and tear excepted. Defendants shall preserve the documents, books and records relating to the franchise until the date of relinquishment of control over the First Interstate System franchise. Defendants shall preserve the documents, books and records of the Section V.B. branch locations until the date of divestiture.

E. Except in the ordinary course of business, or as is otherwise consistent with the requirements of Section XI., the defendants shall refrain from terminating or altering one or more current employment, salary, or benefit agreements for one or more managerial or commercial loan personnel of the Section V.B. branch locations, and shall refrain from transferring any employee so employed without the prior written approval of plaintiff.

F. Defendants shall refrain from taking any action that would jeopardize the sale of the Section V.B. branch locations or the subsequent licensing of the First Interstate System franchise after defendants have relinquished control to FI.

*XI. Employment Offers*

A. Defendants are hereby enjoined and restrained until two (2) years following the date of divestiture, from employment of, or making offers of employment to, any person who currently is a commercial loan manager, officer or representative, the preponderance of whose duties relate to the successful operation of the Section V.B. branch locations. This provision, however, does not apply to any employee who is terminated by the purchaser of a divested branch. Defendants shall encourage and facilitate employment by the purchaser of such employees, and shall remove any impediments that exist which may deter such employees from accepting employment with the purchaser of any Section V.B. branch location, including, but not limited to, the payment of all bonuses accrued up to the closing date of sale of each Section V.B. branch location to which such employees would otherwise have been entitled had they remained in the employment of defendants until December 31, 1991.

*XII. Visitorial Clause*

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted:

1. Access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees and agents of such defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to any defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section XII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

C. If at the time information or documents are furnished by any defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim or protection may be asserted under rule 26(c)(7) of the Federal Rules of Civil Procedure, and such defendant marks each pertinent page of such material, "Subject to claim of protection under rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

*XIII. Expiration of Judgment*

This Final Judgment will expire on the tenth anniversary of its date of entry or, with respect to any particular provision, on any earlier date specified.

*XIV. Retention of Jurisdiction*

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith,

and for the punishment of any violations hereof.

*XV. Termination of Automatic Stay*

Upon entry of this final judgment, the statutory stay, imposed under 12 U.S.C. 1849(b)(1), that currently enjoins the merger of defendants, shall terminate.

*XVI. Statement of Public Interest*

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge

**Competitive Impact Statement**

The United States, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

*I. Nature and Purpose of the Proceeding*

On December 28, 1990, the United States filed a civil antitrust complaint under section 15 of the Clayton Act, as amended, 15 U.S.C. 25, alleging that the proposed acquisition of First Interstate of Hawaii, Inc. ("FIHI") by First Hawaiian, Inc. and FHI Acquisition Corporation (referred to collectively as "FH") would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

The complaint alleges that the effect of the acquisition may be substantially to lessen competition in the provision of business banking services in the Honolulu, East Hawaii, West Hawaii, Maui, and Kauai geographic markets. Business banking services are services, such as checking accounts and loans, offered to commercial customers. Both FH and FIHI compete directly in offering a variety of business banking services to commercial customers in each of the geographic markets. The proposed acquisition would result in substantial increases in concentration in markets that are already highly concentrated and have substantial entry barriers. The complaint alleges that the proposed acquisition would, in particular, hurt the many small to medium-sized commercial customers purchasing business banking services in Hawaii. The complaint seeks, among other relief, to enjoin the proposed transaction and thereby to prevent its anticompetitive effects.

On March 7, 1991, the United States and FH and FIHI filed a Stipulation by which they consented to the entry of a proposed Final Judgment. Under the proposed Final Judgment, as explained more fully below, defendants would be required to sell designated commercial banking branches [1] in each geographic market and to terminate their license for use of the "First Interstate System" franchise in the state of Hawaii. The United States and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the government withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations of the Judgment.

*II. Events Giving Rise to the Alleged Violation*

On May 11, 1990, FH and FIHI entered into an Agreement and Plan of Merger by which FH, through its subsidiary FHI Acquisition Corporation, would purchase 100 percent of the voting shares of FIHI for approximately $140 million. FH is the second largest banking organization in the state of Hawaii, as measured by total deposits and assets. FH has assets totalling $5.2 billion and controls deposits of approximately $4.7 billion which represent approximately 32 percent of total deposits in commercial banking organizations in Hawaii. FH operates one commercial bank subsidiary, First Hawaiian Bank, and one FDIC-insured financial services loan company, First Hawaiian Creditcorp. FH operates 58 offices located throughout the state.

FIHI is the fourth largest commercial banking organization in the state of Hawaii. FIHI has assets totalling $858.2 million and controls deposits totalling approximately $770.9 million which represent approximately 6 percent of the total deposits in commercial banking organizations in Hawaii. FIHI operates 20 First Interstate Bank of Hawaii offices located throughout the state.

On November 30, 1990, the Federal Reserve Board approved the proposed acquisition of FIHI by FH.[2] The Federal Reserve Board's order required the defendants to divest the Lihue (Kauai market), Kona (West Hawaii market), Wailuku and Lahaina (Maui market) branches of FIHI and the Hilo (East Hawaii market) branch of First Hawaiian Creditcorp, a financial services loan company. The Federal Reserve divestiture permitted the sale of the branches to anyone other than the Bank of Hawaii, the largest commercial bank in the state of Hawaii. Under section 11 of the Bank Holding Company Act, as amended, 12 U.S.C. 1849,[3] the United States had 30 days from the date of the Federal Reserve Board's decision to prevent the proposed acquisition by filing a complaint with the Court.

The United States filed its complaint because the proposed acquisition would likely reduce competition in the provision of business banking services in the relevant markets in Hawaii. The likelihood of competitive harm appears greatest for small to medium-sized commercial customers because the proposed acquisition would eliminate one of only a few financial institutions serving these customers and would likely result in higher prices for business banking services.

Investigation and discovery by the United States shows that FH and FIHI compete in the provision of a wide range of banking services, including services to individual consumers and services to businesses in Hawaii. Many other financial institutions compete with FH and FIHI in the provision of consumer banking services. Only a few institutions, however, are competitors for commercial customers. These competitors are limited to those firms that, at a minimum, provide transaction accounts and commercial loans.[4] FH and FIHI are two of the largest of these few firms. FH and FIHI each offer a variety of business banking services, and compete directly with one another in the relevant geographic markets of: Honolulu, East Hawaii, West Hawaii, Maui, and Kauai. Nine other firms offer business banking services in the state of Hawaii, but not every one of these firms compete in each of the five relevant geographic markets. In the Honolulu market, eight other financial institutions (American Savings Bank, Bank of Hawaii, Bank of Honolulu, Central

[1] The proposed Final Judgment requires divestiture of six commercial bank branches. In addition, one financial services loan company is being divested to a commercial bank that will use the purchased assets and deposits to facilitate the growth of its business banking services business.

[2] *First Hawaiian, Inc.*, 77 Fed. Res. Bull. 52 (1990).

[3] Section 1849(b)(1) provides in pertinent part that: The Board shall immediately notify the Attorney General of any approval by it pursuant to section 1842 of this title of a proposed acquisition, merger, or consolidation transaction * * *. [T]he transaction may not be consummated before the thirtieth calendar day after the date of approval by the Board. Any action brought under the antitrust laws arising out of an acquisition, merger, or consolidation transaction approved under section 1842 of this title shall be commenced prior to the earliest time under this subsection at which the transaction approval under section 1842 of this title might be consummated. The commencement of such an action shall stay the effectiveness of the Board's approval unless the court shall otherwise specifically order. 12 U.S.C. 1849(b)(1).

[4] Commercial loans include all loans to commercial customers not fully secured by real estate. Additional business banking services offered to commercial customers include but are not limited to cash and coin, lockbox, cash management, and business expertise and advice.

Pacific Bank, City Bank, EastWest Bank, Hawaii National Bank and Liberty Bank) offer business banking services. In the East Hawaii market, five other financial institutions (American Savings Bank, Bank of Hawaii, Central Pacific Bank, City Bank and Hawaii National Bank) offer business banking services; and in the West Hawaii market, only two other financial institutions (American Savings Bank and Bank of Hawaii) offer business banking services. In the Maui market, six other financial institutions (Aloha National Bank of Maui, American Savings Bank, Bank of Hawaii, Central Pacific Bank, City Bank and EastWest Bank) offer business banking services. In the Kauai market, three other financial institutions (American Savings Bank, Bank of Hawaii, and Central Pacific Bank) offer business banking services.

Few other financial institutions currently offer or appear likely to start offering within a reasonably short period of time these business banking services in the state of Hawaii. Savings and loan associations are limited by law in the extent to which they make commercial loans; moreover, their ability to begin offering these services to businesses is substantially affected by capital requirements and their own capital positions. Under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989,[5] new, more significant capital requirements and other restrictions were placed upon the lending activities of savings and loan associations. Moreover, savings and loan associations in Hawaii, with one exception, do not currently provide business banking services to any significant degree.[6] The United States' investigation revealed that the above factors coupled with other economic factors concerning the cost, scale and expertise involved in offering business banking services, make it unlikely that savings and loan associations in Hawaii will be likely entrants into the provision of such services.

The investigation also revealed that credit unions in Hawaii are generally not current or potential competitors in business banking services due to a combination of legal and economic restraints. Financial services loan companies are not permitted to offer transaction accounts,[7] and the characteristics of their loans are generally different from those made by commercial banks. Finally, under current statutes,[8] out-of-state bank organizations and bank holding companies are legally prohibited from entry into the state.

The United States concluded that, for business banking services in Hawaii, the relevant geographic markets were the major islands or parts of those islands in the state of Hawaii. Based on a variety of measures, the United States' investigation and discovery indicates that of the firms providing business banking services, only a few firms have very significant market shares; the other firms are significantly smaller. FH and FIHI are in the category of the largest firms. This market structure is significant, because it means that a combination of the two firms will significantly increase concentration. Concentration is important because it indicates the likelihood that a group of firms could exercise market power (*i.e.*, raise prices or reduce output). In addition, the United States concluded that it was unlikely that entry of new competitors into these markets, or rapid expansion of the smallest firms currently in the markets would occur so as to prevent any anticompetitive effects. Under the Justice Department's *Merger Guidelines*,[9] when the Herfindahl-Hirschman Index ("HHI"),[10] a measure of market concentration, is over 1800, additional concentration resulting from a merger is a matter of significant concern. Where the HHI would increase by more than 50 points, the Department is likely to challenge the merger unless the Department concludes, on the basis of other relevant factors, that the merger is not likely substantially to lessen competition.

In Honolulu County, the HHI, calculated based on total deposits [11] of the firms that offer business banking services, would increase (as a result of ten firms going to nine) by 298 to 3033 if the proposed acquisition occurred. In the East Hawaii market, the HHI would increase (as a result of seven firms going to six) by approximately 301 to 3266. In the West Hawaii market, the HHI would increase (as a result of four firms going to three) by approximately 711 to 4063. In the Maui market, the HHI would increase (as a result of eight firms going to seven) by approximately 383 to 3264. In the Kauai market, the HHI would increase (as a result of five firms going to four) by approximately 413 to 3501. These measures indicate highly concentrated markets that would be further concentrated as a result of the proposed acquisition.

Furthermore, the United States found that the form and nature of branch divestitures offered by the defendants and approved by the Federal Reserve Board would not prevent substantial increases in concentration. The United States' determination in this regard was based on the fact, that under the Federal Reserve Board order, the divested branches could have been sold to all but the largest in-market bank. Further, FH had plans to divest to the second-largest (or in some cases the third-largest) competitor, and the United States determined that those divestitures, in light of the high concentration in these markets, would not adequately protect competition.[12] Moreover, the United States found that the number of branch divestitures in some markets was insufficient to resolve competitive concerns.

For all the above reasons, the United States found that each of these geographic markets is highly concentrated; that each would become substantially more concentrated as a result of the proposed acquisition, even with the divestitures directed by the Federal Reserve Board; and that entry

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[5] 12 U.S.C. 1467(t).

[6] The United States found that some of the savings and loan asociations had provided some business banking services in small amounts, but do not provide them now nor are likely to do so within a reasonable period of time in an amount sufficient to affect the prices of those firms currently offering such services.

[7] Hawaii Revised Statutes, chapter 408 at section 14. Financial services loan companies did not consider themselves in competition with the firms offering business banking services because they do not offer transaction accounts and could not extend loans at interest rates competitive with those charged by those firms offering business banking services.

[8] *See* Bank Holding Company Act, 12 U.S.C. 1842(d); McFadden Act, 12 U.S.C. 36.

[9] Department of Justice Merger Guidelines, 2 Trade Reg. Rep. (CCH) ¶ 13,102 at 20,529–30.

[10] The HHI is a measure of market concentration calculated by squaring the market share of each firm in the market and then summing the resulting numbers. For example, for a market supplied by four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2+30^2+20^2+20^2=900+900+400+400=2600$). The HHI takes into account the relative sizes and distribution of firms in a market. It approaches zero when a market is supplied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is supplied by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparities in size among these firms increases.

[11] There is a relationship between the ability to accept deposits and the granting of credit and the provision of other business banking services. The deposits accepted by a financial institution are the primary source of the loans made by it and a principal source of funds to support other services.

[12] In addition, divestiture of the Hilo First Hawaiian Creditcorp's, a financial services loan company, assets and deposits was not restricted to purchase only by a firm offering business banking services. Thus, if it were sold to a firm that does not provide business banking services, it would not ameliorate the harm to competition caused by the increase in concentration in the East Hawaii market.

and expansion were unlikely to offset the anticompetitive effects.

*III. Explanation of the Proposed Final Judgment*

The risk to competition posed by this acquisition would be substantially reduced by the relief provided in the proposed Final Judgment. The proposed Final Judgment provides structural relief in each of the relevant geographic markets through divestiture of branches, and also provides additional relief by requiring the defendants to relinquish use of the First Interstate System franchise.

The ownership of the First Interstate System franchise appears to have been a significant factor in FIHI's growth and position as a provider of business banking services, as well as other banking services. Use of the First Interstate name, a banking name recognized in numerous mainland bank markets and well established in Hawaiian markets, assists the franchisee's growth and fee income in drawing banking business from tourists and from customers relocating from the mainland to Hawaii. The franchisee also receives "custom-tailored" assistance from the franchisor in offering a variety of consumer and business banking services that reduces its costs of providing those services. Termination of the defendants' ownership of the First Interstate System franchise (*i.e.*, freeing it up for a smaller competitor) will facilitate the growth of a new First Interstate System franchisee over time into a strengthened and more aggressive provider of business banking services.

Specifically, Section IV. of the proposed Final Judgment requires that FH or FIHI provide notice within two business days after entry of the proposed Final Judgment to First Interstate Bancorp (the franchisor) of their intent to terminate use of the First Interstate System franchise. Defendants are required to relinquish all control and use of the franchise license no later than one year [13] from the date of termination notice and are prohibited from purchasing or attempting to purchase the franchise license until after the expiration of the proposed Final Judgment. In addition, FH is required to maintain the First Interstate System franchise in such a manner as to facilitate its marketability to a new franchisee after FH has surrendered control and use of the franchise.

In addition to the franchise termination, FH is required, by Section V. of the proposed Final Judgment, within six months (with the exception of the Hilo First Hawaiian Creditcorp office, in the East Hawaii market, which has been sold, contingent upon entry of this proposed Final Judgment) of the filing date of the proposed Final Judgment to divest the following banking branches.

1. In the Honolulu County market, the FIHI Hawaii Kai and Kailua branch assets and deposits;

2. In the Maui market, the FIHI Lahaina and Wailuku branch assets and deposits;

3. In the West Hawaii market, the FIHI Kailua-Kona branch assets and deposits; and

4. In the Kauai market, the FIHI Lihue branch assets and deposits.

The proposed Final Judgment prohibits the sale of any of the above branches to Bank of Hawaii. In addition, FH cannot sell the Lahaina, Wailuku, Kona, Lihue or Hilo branches to American Savings Bank. FH cannot sell the Hawaii Kai, Kailua, Lahaina, Wailuku, Lihue or Hilo branches to Central Pacific Bank. In the event that no sale of the Lahaina and Lihue branches is made by FH, and those branches are assigned to a trustee for sale, then Central Pacific Bank may be considered as a purchaser.[14] In the West Hawaii market, the United States, subject to the review procedures provided for in the proposed Final Judgment, has agreed that Central Pacific Bank, which operates in Hawaii, but currently does not have a branch in that market, is an acceptable purchaser for the Kailua-Kona branch assets and deposits.

All purchasers must demonstrate to the satisfaction of the United States that they have a good faith intention to operate the divested branches as banking branches that offer business banking services. The proposed Final Judgment also requires that FH preserve the assets of the divested banking branches until purchased by a buyer. If FH fails to sell the branches within six months of the filing date of the proposed Final Judgment, FH shall file with the court and notify plaintiff within thirty days of the date the purchase contracts were required to be entered into by FH. The United States can then proceed under the terms of Section VI. of the proposed Final Judgment to appoint a trustee to accomplish the branch divestitures.

The divestitures required by Section V. of the proposed Final Judgment require structural relief, along with the release of the franchise, designed to ensure that the markets remain competitive despite the proposed acquisition. The proposed Final Judgment requires the divestiture of branches to financial institutions that do not currently have significant competitive presences in each of the relevant markets. The divestitures will bring about the entry of a new provider or make larger an existing, small provider of business banking services in each of these markets, thereby, ensuring that competition is not substantially lessened by the acquisition.

The United States and FH and FIHI have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the APPA. The proposed Final Judgment constitutes no admission by any party as to any issue of fact or law. Under the provisions of section 2(e) of the APPA, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed Final Judgment is in the public interest.

*IV. Remedies Available to Potential Private Litigants*

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys fees.[15] Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust actions under the Clayton Act. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect on any private lawsuit that may be brought against the defendants.

[13] This is the minimum time for termination provided by the franchise agreement. Based on representations by the defendants and franchisor that it would take at least a year to set up a new franchisee, the United States concluded that requiring immediate relinquishment of the franchise might negatively affect the value of the franchise to a new franchisee in the state of Hawaii.

[14] The United States agreed to Central Pacific Bank, subject to the review procedures provided for in this Final Judgment, as a purchaser of the Lahaina and Lihue branch assets and deposits because it would result in a lower level of concentration than would otherwise occur should FH keep the branches or a larger competitor be permitted to purchase them.

[15] Section II of the Bank Holding Company Act, 12 U.S.C. 1849, however, prevents the filing of an antitrust suit (other than a suit under section 2 of the Sherman Act) later than 30 days after the Federal Reserve Board's decision on November 30, 1990. The United States is not aware of any private suit filed during the 30 day period.

*V. Procedures Available for Modification of the Proposed Final Judgment*

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and responses of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to Constance K. Robinson, Chief, Communications and Finance Section, Antitrust Division, U.S. Department of Justice, 555 Fourth Street, NW., Washington, DC 20001.

The proposed Final Judgment provides that the Court retains jurisdiction over this action and any party may apply to the Court for any order necessary or appropriate for its modification, interpretation or enforcement.

*VI. Alternatives to the Proposed Final Judgment*

The United States considered the following alternatives regarding divestiture of bank branches. In the East Hawaii market, the United States considered requiring the defendants to divest either a FH or FIHI commercial banking branch in Hilo, rather than the Hilo First Hawaiian Creditcorp office. That alternative was considered because the First Hawaiian Creditcorp office does not currently provide the types of business banking services at issue in this case. Therefore, it was not clear that divestiture of that office would provide an effective remedy for anticompetitive effects in the provision of business banking services in the East Hawaii market. In order to resolve those concerns, defendants agreed to find a buyer for that office before the filing of the proposed Final Judgment, so that the government could conduct sufficient inquiries to determine that the purchaser could and would use the divested assets and deposits to increase its offering of business banking services in the East Hawaii market. The government has made that determination. It has approved Hawaii National Bank as the purchaser and is satisfied as to that bank's intention to offer business banking services in the East Hawaii market.

Second, the United States also considered requiring more branch bank divestitures on the island of Oahu. The United States rejected this alternative in light of the franchise termination which the United States believes will supplement the proposed divestitures (which were not in the Federal Reserve Board's order) and will primarily resolve its competitive concerns on the island of Oahu where all but one of the institutions offering business banking services currently have some branches.

As a final alternative to the proposed Final Judgment, the United States considered continued litigation for seeking an injunction to block FH's acquisition of FIHI. The United States rejected that alternative because the termination of the franchise and the sale of the commercial bank branches will establish viable independent competitors to FH in all the relevant markets and likely will prevent the proposed acquisition from having significant anticompetitive effects in those markets.

*VII. Standard of Review Under the Tunney Act for Proposed Final Judgment*

The Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16 (1974), requires that proposed consent judgments in antitrust cases brought by the United States are subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed judgment "is in the public interest". In making that determination, the court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). (emphasis added). The courts have recognized that the term, "public interest", "take(s) meaning from the purposes of the regulatory legislation."[16] Since the purpose of the antitrust laws is to "preserv(e) free and unfettered competition as the rule of trade,"[17] the focus of the "public interest" inquiry under the Tunney Act is whether the proposed final judgment would serve the public interest in free and unfettered competition.[18] In conducting this inquiry, "(t)he Court is nowhere compelled to go to trail or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[19] Rather,

(a)bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making the public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.[20]

It is also unnecessary for the district court to "engage in an unrestricted evaluation of what relief would best serve the public."[21] Precedent requires that

The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" (citation omitted) More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree. (emphasis added).[22]

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[16] *NAACP* v. *FPC*, 425 U.S. 662, 669 (1976).

[17] *Northern Pacific Railway Co.* v. *United States*, 356 U.S. 1, 4 (1958). *See also National Society of Professional Engineers* v. *United States*, 435 U.S. 679, 692 (1978).

[18] *Accord United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), *cert. denied*, 465 U.S. 1101 (1984); *United States* v. *Waste Management, Inc.*, 1985–2 Trade Cas. (CCH) ¶66,651 at 63,046 (D.D.C. 1985).

[19] 119 Cong. Rec. 24598 (1973). *See United States*, v. *Gillette Co., supra*, 406 F.Supp. at 715. A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Responses to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. CODE CONG. & AD. NEWS 6535, 6538.

[20] *United States* v. *Mid-America Dairyman, Inc., supra*, 1977 Trade Cas. at 71,980.

[21] *United States* v. *BNS Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) *quoting United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981).

[22] *United States* v. *Bechtel, supra*; *United States* v. *BNS, Inc., supra*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F.Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F.Supp. 713, 716 (D. Mass. 1975). *See also United States* v. *American Cyanamid Co., supra.*

A proposed consent decree is an agreement between the parties which is reached after exhaustive negotiations and discussions. Parties do not hastily and thoughtlessly stipulate to a decree because, in doing so, they

Waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and the elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.[23]

The proposed consent decree, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a merger or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted)."[24]

*VIII. Determinative Materials and Documents*

The United States considers FH's contract with Hawaii National Bank for the sale of the Hilo First Hawaiian Creditcorp office, an affidavit from Hawaii National Bank stating its intent to use the divested assets and deposits in offering business banking services, and a letter from HonFed Bank stating that it will not attempt to purchase the First Interstate System franchise during the duration of this Final Judgment to be determinative documents. These documents relate to terms of the proposed divestitures and franchise termination provisions and were determinative to the United States in formulating this proposed Final Judgment. Accordingly, these documents are being filed with this Competitive Impact Statement.

Respectfully submitted,

Patricia A. Shapiro,

Laury E. Bobbish,

Jennifer L. Otto.

[FR Doc. 91-6096 Filed 3-13-91; 8:45 am]

BILLING CODE 4410-01-M

[23] *United States* v. *Armour & Co.*, 402 U.S. 673, 681 (1971).

[24] *United States* v. *American Tel. and Tel Co.*, 552 F. Supp. 131, 150 (D.D.C.), *aff'd*, 460 U.S. 1001 (1982) *quoting United States* v. *Gillette Co.*, 406 F.Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.*, 605 F.Supp. 619, 622 (W.D. Ky 1985).

## Drug Enforcement Administration

### Importer of Controlled Substances; Registration

By Notice dated January 15, 1991, and published in the Federal Register on January 24, 1991, (56 FR 2775), Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08877, made application to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substance Import and Export Act and in title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: March 5, 1991.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 91-5980 Filed 3-13-91; 8:45 am]

BILLING CODE 4410-09-M

### Importer of Controlled Substances; Registration

By Notice dated December 27, 1990, and published in the Federal Register on January 10, 1991, (56 FR 1027), Stanford Seed Company, 340 South Muddy Creek Road, Denver, Pennsylvania 17517, made application to the Drug Enforcement Administration to be registered as an importer of Marihuana (7360), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substance Import and Export Act and in accordance with title 21 Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: February 26, 1991.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 91-5979 Filed 3-13-91; 8:45 am]

BILLING CODE 4410-09-M

### Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on December 18, 1990, Celgene Corporation, 7 Powder Horn Drive, Warren, New Jersey 07059, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule I controlled substance 2,5-dimethoxyamphetamine (DMA)(7396).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20357, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 15, 1991.

Dated: March 6, 1991.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 91-5982 Filed 3-13-91; 8:45 am]

BILLING CODE 4410-09-M

### Manufacturer of Controlled Substances; Registration

By Notice dated January 8, 1991, and published in the Federal Register on January 17, 1991, (56 FR 1824), Norac Company, Inc., 405 S. Motor Avenue, Azusa, California 91702, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Ibogaine (7260) | I |
| Tetrahydrocannabinols (7370) | I |

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: March 5, 1991.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 91-5981 Filed 3-13-91; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF LABOR

### Office of the Secretary

### ERISA Technical Release 91-01

**AGENCY:** Office of the Secretary, Labor.

**ACTION:** Notice of Expedited Information Clearance under the Paperwork Reduction Act.

**SUMMARY:** The Pension and Welfare Benefits Administration, in carrying out its responsibilities under the Paperwork Reduction Act (PRA) (44 U.S.C. chapter 35, 5 CFR part 1320 (53 FR 16618, May 10, 1988)), is submitting ERISA Technical Release 91-01. This technical release alerts the public to recent amendments of title I of the Employee Retirement Income Security Act (ERISA) which, among other things, requires that advance notification be provided to the Secretaries of Labor and the Treasury, as well as other persons, of an intended transfer of excess pension assets from a defined benefit plan to a retiree health benefit account, described in section 401(h) of the Internal Revenue Code, which is a part of such plan.

**DATES:** The Pension and Welfare Benefits Administration (PWBA) has requested an expedited review of this submission under the PRA. This OMB review has been requested to be completed by April 4, 1991.

**FOR FURTHER INFORMATION CONTACT:** Comments and questions regarding ERISA Technical Release 91-01 should be directed to Paul E. Larson, Departmental Clearance Officer, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210 (202-523-6331).

Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for PWBA, Office of Management and Budget, room 3001, Washington, DC 20503 (202-395-6880).

Any member of the public who wants to comment on the information collection clearance package which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

*Average Burden Hours/Minutes per Response:* 1 hour.

*Frequency of Response:* On Occasion.

*Number of Respondents:* 40.

*Annual Burden Hours:* 40.

*Annual Responses:* 40.

*Affected Public:* Businesses or other for-profit; non-profit institutions; small businesses or organizations.

*Respondents Obligation to Reply:* Required to obtain or retain a benefit.

Signed at Washington, DC this 7th day of March, 1991.

**Theresa M. O'Malley,**

*Acting Departmental Clearance Officer.*

Appendix

Pursuant to 5 CFR 1320.18(g), the Pension and Welfare Benefits Administration (PWBA) is requesting that the Office of Management and Budget (OMB) review ERISA Technical Release 91-01 on an expedited schedule. ERISA Technical Release 91-01 alerts the public to recent amendments of title I of ERISA, which, among other things, require that advance notification be provided to the Secretaries of Labor and of the Treasury, as well as other persons, of an intended transfer of excess pension assets from a defined benefit plan to a retiree health benefit account, described in section 401(h) of the Internal Revenue Code, which is a part of such plan.

The requirements relating to advance notification of transfers to retiree health benefit accounts are contained in section 101(e), added to ERISA as part of the Omnibus Budget Reconciliation Act of 1990. This provision is effective for transfers made after December 31, 1990. Because the requirements of ERISA section 101(e) are already applicable, it is extremely important to provide guidance to those plan sponsors who wish to make such transfers. Consequently, PWBA is requesting that the OMB review ERISA Technical Release 91-01 within 21 days after the date of publication in the **Federal Register** of a notice that ERISA Technical Release 91-01 has been submitted to OMB for review under the Paperwork Reduction Act.

The PWBA has taken all practicable steps to consult with interested agencies in order to minimize the burden of this reporting requirement. In the process of finalizing this technical release, the Departments of Labor of the Treasury worked to simplify the notice requirements of ERISA section 101(e)(2). As a result of these efforts, the Department of Labor and the Treasury agreed to permit the filing of *one* notice with DOL to satisfy the requirement that *both* the Secretary of Labor and the Secretary of the Treasury receive a notice 60 days before a plan sponsor makes a qualified transfer.

**SF-83 Request for OMB Review Pension and Welfare Benefits Administration U.S. Department of Labor**

*Subject:* ERISA Technical Release No. 91-01.

Supporting Statement:

*1. Statutory Authority for Information Collection*

The Omnibus Budget Reconciliation Act of 1990 (OBRA '90) added new section 420 to the Internal Revenue Code of 1986, as amended (Code). Code section 420 sets forth the conditions under which transfers (referred to as "qualified transfers") can be made from a defined benefit plan to a retiree health benefit account. Before a qualified transfer may be made, however, under section 101(e), which was also added by OBRA '90, an employer must provide advance written notification to the Secretaries of Labor and Treasury, as well as to the plan administrator, and each employee organization representing participants in the plan of the qualified transfer.

Section 101(e)(1) describes the plan administrator's obligation to provide advance written notification of transfers to participants and beneficiaries. Section 101(e)(2)(A) describes the employer's obligation to provide advance written notification to the Secretaries of Labor and the Treasury. In light of *Dole* v. *United Steelworkers of America*, 110 S. Ct. 929 (1990), this PRA submission only concerns the reporting to the Secretaries of Labor and the Treasury.

Pursuant to new ERISA section 101(e)(2), advance notifications must be provided to the Secretaries of Labor and the Treasury not later than 60 days before the date of a qualified transfer. In addition, under ERISA sections 502(c)(1) and 502(c)(3), as amended by OBRA '90, plan administrators and employers who fail to satisfy the advance notification requirements of ERISA section 101(e) may, in the discretion of a court, be liable in an amount of up to $100 a day from the date of such failure.

*2. Purposes of the Information Collection*

The reporting requirements are intended to protect the rights of participants and beneficiaries by giving the Secretaries of Labor and the Treasury advance notice of a transfer of plan assets from a defined benefit plan to a retiree health benefit account. This notice is statutorily mandated by ERISA section 101(e)(2).

*3. Obstacles to Reducing the Burden*

This is not applicable to the requirements of this technical release.

*4. Identification of Duplication*

No duplication of efforts exists with this technical release. In fact, this

technical release helps reduce duplication of effort because, instead of requiring plan sponsors to provide separate notices to the Secretaries of Labor and the Treasury as provided for in the statute, this technical release permits one filing with the Secretary of Labor to satisfy the statutory requirements.

*5. Availability of Similar Information*

No similar information is collected or available.

*6. Minimizing the Impact on Small Businesses*

Section 101(e)(2) applies to all plans that wish to transfer assets from a defined benefit plan to a retiree health benefit account. There is no exception for small businesses.

*7. Consequences of Less Frequent Collection*

The notice requirements are only mandatory if a defined benefit plan sponsor wishes to transfer assets from a defined benefit plan to a retiree health benefit account. The frequency is dependent on the occurrence of a transaction, not on a predetermined time period.

*8. Special Circumstances*

There are no special circumstances that require the collection to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.6.

*9. Consultations with Outside Agencies*

In the process of finalizing this technical release, the Departments of Labor and Treasury worked to simplify the notice requirements of ERISA section 101(e)(2). As a result of these efforts, the Department of Labor (DOL) and the Department of the Treasury agreed to permit the filing of one notice with DOL to satisfy the requirement that both the Secretary of Labor and the Secretary of the Treasury receive a notice 60 days before a plan sponsor makes a qualified transfer.

*10. Confidentiality*

There is no promise of confidentiality of the information.

*11. Questions of a Sensitive Nature*

There are no questions of a sensitive nature related to this technical release.

*12. Annualized Cost to the Federal Government and Respondents*

We estimate that the cost to the federal government is minimal.

*13. Estimate of Information Collection Burden*

The PWBA estimates that no more than 40 plan sponsors will decide to transfer plan assets from their defined benefit plans to Code section 401(h) retiree health benefit accounts per year. The PWBA also notes that this provision is scheduled to expire for taxable years beginning on or after January 1, 1996. Assuming that it takes one hour to prepare and file the notice with the Secretary of Labor, the Department estimates that the total information collection burden would be 40 hours annually (40 x 1 hour).

*14. Reason for Change in Burden*

There has been no change in the information collection burden of this technical release. The technical release is being submitted for a control number for the first time becuase of the requirements of 5 CFR Part 1320.

*15. Statistical Use*

The information will not be used for statistical purposes. The collection of information for this technical release does not employ statistical methods.

*Contact:* Katherine D. Lewis.
*Office:* (202) 523-7901.

**Notice Requirements Regarding Transfers of Excess Pension Assets to Retiree Health Benefit Accounts**

The purpose of this release is to alert the public to recent amendments of title I of the Employee Retirement Income Security Act (ERISA) which, among other things, require that advance notification be provided to the Secretary of Labor and the Secretary of the Treasury, as well as other persons, of an intended transfer of excess pension assets from a defined benefit plan to a retiree health benefit account, described in section 401(h) of the Internal Revenue Code (the Code), which is part of such plan.

*General*

The requirements relating to advance notification of transfers to retiree health benefit accounts are contained in section 101(e), added to ERISA as part of Omnibus Budget Reconciliation Act of 1990 (OBRA '90, Pub. L. 101-508).

Section 101(e)(1) describes the plan administrator's obligation to provide advance written notification of transfers to participants and beneficiaries. Section 101(e)(2)(A) describes the employer's obligation to provide advance written notification to the Secretaries of Labor and Treasury, as well as to the administrator, and each employee organization representing participants in the plan and section 101(e)(2)(B) describes the information required to be contained in the notification. OBRA '90 also added a new section 420 to the Code which sets forth the conditions under which transfers (referred to as "qualified transfers") can be made after December 31, 1990 from a defined benefit plan to a retiree health benefit account.

Section 101(e) requires that advance notifications must be provided not later than 60 days before the date of a qualified transfer. Administrators and employers who fail to satisfy the advance notification requirements of section 101(e) may, in the discretion of the court, be liable in an amount of up to $100 a day from the date of such failure. (*See*: Sections 502(c)(1) and 502(c)(3), as amended by OBRA '90.)

The Department of Labor is considering whether there are any issues regarding the notice requirements of section 101(e) which should be clarified by means of regulatory guidance.

*Notifications Furnished to Participants and Beneficiaries*

Section 101(e) requires that advance notifications provided to participants and beneficiaries contain the following: (1) The amount of excess pension assets; (2) the portion to be transferred; (3) the amount of health benefits liabilities expected to be provided with the assets transferred; and (4) the amount of pension benefits of the participant which will be nonforfeitable immediately after the transfer.

*Note:* 29 CFR 2520.104b-1 describes the manner in which disclosures required under part 1 of title I of ERISA must be furnished to participants and beneficiaries. These requirements would apply to notifications under section 101(e) in the absence of regulations providing otherwise.

*Notifications Filed With the Secretaries*

In accordance with the provisions of section 3004 of ERISA, relating to the coordinating of functions between the Secretary of Labor and the Secretary of the Treasury, the filing of the advance notification described in section 101(e)(2) of ERISA with the Secretary of Labor shall also constitute a filing of that notice with the Secretary of the Treasury. The Department of Labor will forward to the Internal Revenue Service copies of the required notifications or the information contained therein.

Pursuant to section 101(e)(2)(B) advance notifications are required to contain the following: (1) Identification of the plan from which the transfer is made [Note: for identification and

processing purposes, notifications should contain the name, address and EIN of the employer and the name, EIN and PN of plan]; (2) the amount of the transfer; (3) a detailed accounting of assets projected to be held by the plan immediately before and after the transfer; and (4) the current liabilities under the plan at the time of transfer. Notifications should include the filing date and the date on which the transfer is intended to take place.

Notifications required to be filed with the Secretaries pursuant to section 101(e)(2) must be sent to: Section 101(e)(2) Notice, Room N5644, Division of Reports, PWBA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

All notices under section 101(e)(2) filed with the Department of Labor will be available for public inspection in the Public Documents Room, N5507, 200 Constitution Avenue NW., Washington, DC 20210.

[FR Doc. 91-6100 Filed 3-13-91; 8:45 am]

BILLING CODE 4510-29-M

## Employment and Training Administration

### Federal-State Unemployment Compensation Program: Extended Benefits; New Extended Benefit Period in the State of Maine

This notice announces the beginning of a new Extended Benefit Period in the State of Maine, effective on February 17, 1991, and remaining in effect for at least 13 weeks after that date.

**Background**

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by part 615 of title 20 of the Code of Federal Regulations (20 CFR part 615).

Each State unemployment compensation law provides that there is a State "on" indicator (triggering on an Extended Benefit period) for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment in the State equaled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator in the State. A benefit period will be in effect for a minimum of 13 weeks, and will end the third week after there is an "off" indicator.

**Determination of an "on" Indicator**

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the 13-week period ending on February 2, 1991, equals or exceeds 5 percent and is 20 percent higher than the corresponding 13 week period in the prior two years, so that for that week there was an "on" indicator in the State.

Therefore, a new Extended Benefit Period commenced in the State with the week beginning on February 17, 1991. This period will continue for no less than 13 weeks, and until three weeks after a week in which there is an "off" indicator in the State.

**Information for Claimants**

The duration of extended benefits payable in the Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins. 20 CFR 615.13(c)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period. 20 CFR 615.13(c)(2).

Persons who believe they may be entitled to extended benefits in the State named above, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC on March 8, 1991.

**Roberts T. Jones,**

*Assistant Secretary of Labor.*

[FR Doc. 91-6101 Filed 3-13-91; 8:45 am]

BILLING CODE 4510-30-M

## NUCLEAR REGULATORY COMMISSION

**Docket No. 50-352**

### Philadelphia Electric Co. Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Philadelphia Electric Company (the licensee) to withdraw its February 25, 1987 application for proposed amendment to Facility Operating License NPF-39 for the Limerick Generating Station, Unit 1, located in Montgomery and Chester Counties, Pennsylvania.

The proposed amendment would have revised the facility Technical Specifications Section 6.9.1.8 to provide an extension of 30 days to the existing 60 day requirement for submitting the Semiannual Radioactive Effluent Release Report to the NRC. This submittal also requested a related exemption from the requirements of 10 CFR 50.36a(a)(2) to provide the same 30 day extension for submitting the Semiannual Radioactive Effluent Release Report to the NRC.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on April 8, 1987 (52 FR 11371). However, by letter dated February 6, 1991, the licensee withdrew the proposed change. Licensee efforts, subsequent to the filing of the 1987 submittal, resulted in streamlined processes for collecting data, obtaining sample analyses results, and preparing the semi-annual effluent report. The licensee concluded that a 30 day extension to the reporting requirement was no longer necessary.

For further details with respect to this action, see the application for amendment dated February 25, 1987, and the licensee's letter dated February 6, 1991, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Dated at Rockville, Maryland, this 7th day of March 1991.

For the Nuclear Regulatory Commission.

**Richard J. Clark,**

*Project Manager, Project Directorate I-2, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.*

[FR Doc. 91-6081 Filed 3-13-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-224]

### University of California, Berkeley, Berkeley Research Reactor; Order Terminating Facility License

By application dated January 8, 1988, as supplemented on January 31, 1989 and April 14, 1989, the University of California, Berkeley (the licensee) requested from the Nuclear Regulatory Commission (the Commission) authorization to dismantle and dispose of the component parts of its TRIGA Nuclear Reactor located in Berkeley, California. A "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License," was published in the Federal Register on March 10, 1988 (53 FR 7823). The City of Berkeley filed a "Petition to Intervene In License Amendment Proceeding, Request for Hearings and Further Relief." The city and the licensee held discussions, arrived at a settlement agreement and filed a "Joint Motion For Dismissal Of Hearing Procedure" with the Atomic Safety and Licensing Board. The Board issued an Order on January 5, 1989 to dismiss the proceeding. By Order dated September 12, 1989 (54 FR 38579), the Commission authorized dismantling of the facility and disposition of component parts as proposed in the licensee's decomissioning plan. By application dated April 16, 1990, as supplemented on July 6, 1990, the licensee submitted their "Decomissioning Final Report and Termination Radiation Survey Results," and requested termination of Facility License No. R-101.

The reactor fuel has been removed from the core and shipped to a Department of Energy (DOE) facility. The reactor facility has been completely dismantled and all requirements pertaining to residual radioactivity, personnel and external radiation exposure, and fuel disposition have been met. Confirmatory radiological surveys verified that the facility met the recommended regulatory guidance for release of the facility for unrestricted use. Accordingly, the Commission has found that the facility has been dismantled and decontaminated pursuant to the Commission's Order dated September 12, 1989. Satisfactory disposition has been made of the component parts and fuel in accordance with the Commission's regulations in 10 CFR Chapter I, and in a manner not inimical to the common defense and security, or to the health and safety of the public. Therefore, based on the application filed by the University of California, Berkeley, and pursuant to sections 104 and 161 b, i, of the Atomic Energy Act of 1954, as amended, and in 10 CFR 50.82(f), Facility License No. R-101 is terminated as of the date of this Order. In accordance with 10 CFR part 51, the Commission has determined that the issuance of this termination Order will have no significant impact. The Environmental Assessment was published in the Federal Register on March 5, 1991 (56 FR 9238).

For further details with respect to this action see (1) the application for termination of Facility License No. R-101, dated April 16, 1990 as supplemented, (2) the Commission's Safety Evaluation related to the termination of the license, (3) the Environmental Assessment, and (4) the "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License," published in the Federal Register on March 10, 1988 (53 FR 7823). Each of these items is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, 20555.

Copies of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Director, Division of Advanced Reactors and Special Projects.

Dated at Rockville, Maryland this 8th day of March 1991.

For the Nuclear Regulatory Commission.

**Dennis M. Crutchfield,**

*Director, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 91-6062 Filed 3-13-91; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF MANAGEMENT AND BUDGET

### Office of Federal Procurement Policy

### Procurement Regulatory Activity Report; Availability

**AGENCY:** Office of Management and Budget, Office of Federal Procurement Policy.

**ACTION:** Notice of availability of the *Procurement Regulatory Activity Report, Number 4.*

**SUMMARY:** Subsections 25(g) (1) and (2) of the Office of Federal Procurement Policy (OFPP) Act, as amended by Public Law 100-679, codified at 41 U.S.C. 421(g), required the Administrator for Federal Procurement Policy to publish a report within six months after the date of enactment and every six months thereafter relating to the development of procurement regulations.

Accordingly, OFPP has prepared for the fourth *Procurement Regulatory Activity Report.* This report is designed to satisfy all aspects of subsections 25(g) (1) and (2) of the OFPP Act, and includes information on: The status of each regulation; a description of those regulations required by statute; a description of the methods by which public comment was sought; regulations, policies, procedures, and forms under review by the OFPP; whether the regulations have paperwork requirements; the progress made in promulgating and implementing the Federal Acquisition Regulation; and such other matters as the Administrator determines to be useful.

**ADDRESSES:** Those persons interested in obtaining a copy of the Procurement Regulatory Activity Report may contact the Executive Office of the President Publications Service, room 2200, 725 17th Street, NW., Washington, DC 20503, or phone (202) 395-7332.

**Allan V. Burman,**

*Administrator.*

[FR Doc. 91-5996 Filed 3-13-91; 8:45 am]

BILLING CODE 3110-01-M

## OVERSIGHT BOARD

### National Advisory Board Meeting

**AGENCY:** Oversight Board.

**ACTION:** Meeting notice.

**SUMMARY:** In accordance with section 10(a)(2) of the Federal Advisory Committee Act 5 U.S.C. (A), announcement is hereby published for a meeting of the National Advisory Board. The meeting is open to the public.

**DATES:** The meeting is scheduled for Wednesday, March 27, 1991, from 10 a.m. to 3:30 p.m.

**ADDRESSES:** The meeting will be held in the Office of Thrift Supervision, Ampitheater, second floor, 1700 G Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Jill Nevius, Committee Management Office, Oversight Board/RTC, 1777 F Street, NW., Washington, DC 20232, 202/786-9675.

**SUPPLEMENTARY INFORMATION:** Section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (the Act), Public Law No. 101-73, 103 Stat. 183, 382-383, directed the Oversight Board to establish one national advisory board and six regional advisory boards.

*Purpose:* The purpose of the national advisory board is to provide information and advice to the Oversight Board and the RTC.

*Agenda:* A detailed agenda will be available at the meeting. There will be briefings from the chairman of each of the six regional advisory board meetings held throughout the country between January 29, and February 28, 1991. Discussion will focus on the key topics from the meetings: real estate market conditions, seller financing, SAMDA, delinquent real estate mortgages, affordable housing, and environmental issues.

*Statements:* Interested persons may submit, in writing, data, information, or views on the issues pending before the national advisory board prior to or at the meeting. The meeting is open to the public. Seating is available on a first come first served basis.

Dated: March 11, 1991.

**Jill Nevius,**

*Committee Management Officer, Oversight Board, Advisory Board Affairs.*

[FR Doc. 91-6110 Filed 3-13-91; 8:45 am]

BILLING CODE 2222-01-M

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC-18030; 811-5864]**

### Mortgage Liquidity Fund, Inc.; Notice of Application

March 6, 1991.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

**APPLICANT:** Mortgage Liquidity Fund, Inc.

**RELEVANT 1940 ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

**FILING DATE:** The application on Form N-8F was filed on January 30, 1991 and an amendment was filed on March 1, 1991.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 2, 1991, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 10221 Wincopin Circle, Columbia, Maryland 21044.

**FOR FURTHER INFORMATION CONTACT:** Felice R. Foundos, Staff Attorney, (202) 272-2190, or Jeremy N. Rubenstein, Branch Chief, (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

**APPLICANT'S REPRESENTATIONS:**

1. Applicant is an open-end non-diversified management company organized as a corporation under the laws of the State of Maryland. On August 18, 1989, applicant filed a registration statement pursuant to section 8(b) of the 1940 Act. On that date, applicant also filed a registration statement pursuant to the Securities Act of 1933, which registered an indefinite number of shares of common stock. The registration statement became effective on March 27, 1990.

2. At a meeting held on July 16, 1990, applicant's board of directors suspended the sale of shares of applicant and approved the redemption of any outstanding shares of applicant. On January 29, 1991, applicant's board of directors approved the deregistration of applicant.

3. Prior to the deregistration, applicant invested in short-term interest-bearing securities which were redeemed for cash by their issuers as they matured according to their terms. As of July 23, 1990, the redemption of all of these short-term securities was complete. No brokerage commissions were paid in connection with these redemptions.

4. As of July 31, 1990, pursuant to applicant's plan to deregister, applicant distributed a total of $11,099,000 to the four shareholders of applicant in redemption of their shares. Each shareholder received $1.00 per share, representing the net asset value per share. The seed capital shareholder, Maryland National Bank, retained shares valued at $1,000. Upon payment of this amount, the shares were transferred to Ryland Acceptance Corporation on January 29, 1991.

5. The organizational expenses of applicant, totaling $776,579, were borne by applicant's investment adviser, Ryland Acceptance Advisers, Inc.

6. At the time of filing this form, applicant retained $1,000 from the capital investment in applicant for any small unanticipated expenses. The expenses applicable to the deregistration will be borne by Ryland Acceptance Corporation, applicant's sole shareholder.

7. Applicant does not intend to dissolve as a corporation. After the deregistration, a shell company will remain that will not be used as an investment company. At the date of this application, the organizers of applicant have no definite plans for the shell company.

8. As of the date of the application, applicant had no debts or liabilities, and was not a party to any litigation or administrative proceeding.

9. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding up of its affairs as an investment company.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 91-5985 Filed 3-13-91; 8:45 am]

BILLING CODE 8010-01-M

**[Release No. 34-28945; File No. SR-NASD-90-58]**

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Written Notification of Employer Members and Executing Members by Associated Person Regarding Relations with Each Member

The National Association of Securities Dealers, Inc. ("NASD") submitted on October 25, 1990 a proposed rule change pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 [2] thereunder to amend Article III, Section 28(c) of the NASD Rules of Fair practice to require an associated person to provide notice in writing (1) to his or her employer prior to opening or placing an initial order in a securities account with another member, and (2) to the executing member of his or her association with the employer member. Notice of the filing and the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1989).

terms of substance of the proposed rule change was given by the issuance of a Commission release, Securities Exchange Act Release No. 28816, (January 24, 1991) and by publication in the **Federal Register** (56 FR 3500 January 30, 1991). No comment letters were received.

Presently, Article III, section 28(c) requires a registered representative, prior to opening an account or executing trades at a firm other than his or her employer, to inform the executing member firm of his or her status as an associated person. This provision does not, however, require the notice to be in writing. Moreover, there is no specific provision in the Association's Rules of Fair Practice that requires the registered representative to inform his or her employer member that he or she is executing trades through another firm.[3]

The NASD has proposed this amendment because they believe it would provide additional assurances that the registered representative, the employer member firm, and the executing member firm have satisfied their respective obligations under the federal securities laws and the Rules of Fair Practice. As it stands now, when a registered representative opens an account or executes trades through a firm other than his or her employer, the burden is placed on the executing member to notify the employer member and to provide duplicate confirmations or such other information as the employer member may require. The NASD believes that placing the burden of notification on the employee will prevent the likelihood that the notification will be inadvertently overlooked by the executing member in light of other existing regulatory obligations.

The NASD is of the opinion that the amendment would prevent instances in which trades may be made on inside information because the employer member was not aware of the existence of the account with another member. The NASD acknowledges the fact that there may be circumstances which dictate that an associated person hold an account with someone other than their employer member, and this amendment would not serve to prevent that. On the contrary, it would only require notification of the existence of such an account.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A(b)(6), which requires in pertinent part, that the rules of a national securities association be desinged to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest in that the proposed rule change will provide information to employers of associated persons who have accounts or execute trades through another member and consequently will assist the employer-member in detecting possible securities law violations.

Based on the foregoing, the Commission concludes that requiring the proposed notification would assist employer members in creating and enforcing internal compliance procedures and facilitate more direct and early detection of the existence of potential rule violations. The Commission believes the amendment may assist in lessening the occurrence of insider trading by associated persons in that the employer member will have more complete knowledge of associated persons' trading activities and consequently an enhanced ability to protect material non-public information. Alternatively, the proposed rule change will also serve to protect member firms as well as associated persons with only good intentions in mind.

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is approved.

For the Comission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: March 6, 1991.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 91-5983 Filed 3-13-91; 8:45 am]

BILLING CODE 8010-01-M

[3] The transactions subject to section 28 are not considered to be private securities transactions that need to be approved by the employing member pursuant to Article III, section 40 of the Rules of Fair Practice.

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**[Release No. 34-28946; File No. SR-NASD-91-12]**

## Self-Regulatory Organizations; Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the OTC Bulletin Board Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 26, 1991, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On May 1, 1990, the Securities and Exchange Commission issued an order approving operation of the NASD's OTC Bulletin Board service ("Service") for a pilot term of one year.[1] The Service provides an electronic quotation medium for NASD members to enter and display quotations in non-NASDAQ securities in which they register as market makers. With respect to every foreign security or ADR quoted in the Service, individual market makers are permitted to update their displayed quotations only twice daily, once between 8:30 and 9:30 a.m. E.T. and once between noon and 12:30 p.m. E.T. Domestic securities quoted in the Service are not subject to this update restriction.

The NASD hereby submits, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and rule 19b-4 thereunder, a proposed rule change to require that all priced bids/offers entered by registered market markers be firm for one unit of trading. The new requirement would apply exclusively to priced quotations for domestic, non-NASDAQ securities quoted in the Service. Market makers in these securities would retain the options of entering (i) Bid wanted/offer wanted indications, (ii) quotations consisting solely of the firm's name and telephone number, and (iii) indications of unsolicited customer interest.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] Securities Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19124 (May 8, 1990).

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The essential purpose of this proposal is to establish a firmness requirement for priced bids/offers entered into the Service by market markers respecting domestic, non-NASDAQ securities. Currently, market makers in these securities can elect to enter firm or non-firm priced bids/offers. Since the Service's inception, the NASD has found that firm prices—in the form of one and two-sided quotations—have been predominant among Service market makers in domestic issues.[2] Because these issues are not subject to any update limitation, many market makers actively compete for order flow by entering and updating firm quotations in domestic securities during the Service's business hours. Nontheless, some market makers have attempted to attract business by entering a non/firm bid slightly better than the highest firm bid. When contracted about a trading interest at the "superior" price, the market maker expressed a willingness to transact at the highest firm bid rather than the indicative price. Because the superior price was non-firm, the affected market maker cannot be held to it. This practice, however, may result in some diversion of order flow away from other market makers entering competitive, firm prices in the same security. More importantly, it detracts from the overall reliability of priced quotations being displayed in the Service for domestic issues. To ensure fair dealing among Service market markers and the execution of customer orders at the best available price, the NASD has determined to eliminate a market marker's option of displaying non-firm priced bids/offers in the Service for any domestic non-NASDAQ security.

Assuming Commission approval, this proposed rule change would be implemented within 21 business days of issuance of the approval order, and become a permanent requirement of the Service.

The NASD relies on subsections (6) and (11) of section 15A(b) of the Act as providing the statutory basis for this rule change. Subsection (6) requires, *inter alia*, that the NASD's rules promote just and equitable principles of trade, facilitate securities transactions, and that they be structured to protect investors and the public interest generally. Subsection (11) authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter. Such rules should produce fair and informative quotations, prevent misleading quotations, and promote orderly procedures for collecting and disseminating quotations. Additionally, the NASD believes that section 17B of the Act provides a statutory basis for the instant rule change. Among other things, section 17(B) defines the basic characteristics of automated quotation systems for "penny stocks," subsection (b)(2)(C) thereunder provides that such a system have the capability of displaying reliable pricing information for covered securities, including firm bids/offers originated by participating brokers or dealers.

The NASD submits that this proposed modification of the Service is fully consistent with the above-mentioned provisions of the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD believes the proposed rule change will not create any competitive burden. To the contrary, the proposed modification of the Service is intended to promote fair competition among broker-dealers utilizing the Service to make markets in domestic, non-NASDAQ securities. Requiring firmness for priced bids/offers entered by Service market makers in domestic securities will facilitate price discovery among competing dealers in a particular security and the execution of customer orders at the best available price.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The NASD did not solicit or receive written comments on this proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reasons for finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by April 4, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: March 6, 1991.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 91-6102 Filed 3-13-91; 8:45 am]

BILLING CODE 8010-01-M

[2] For example, the months ending December 31, 1990 and January 31, 1991 revealed that firm prices (consisting of both one and two-sided entries) were associated with 71.4% and 71% of total market marker positions, respectively.

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**[Release No. 34-28947; File No. SR-NASD-91-4]**

## Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Data Services and Related Subscriber Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 22, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Pursuant to the provisions of section 19(b)(1) of the Act, NASD has filed a proposed rule change that would expand service offerings and establish

subscriber fees for receipt of broadcast feeds of NASDAQ/National Market System ("NASDAQ/NMS") last sale data or National Quotation Data Service ("NQDS") quotation information into their internal processing systems for development of analytic information based upon the transaction or quotation data received. The text of the new fees, which will appear in section C under part IX of Schedule D to the NASD By-Laws, is set forth below. (New language is italicized and deleted language is bracketed.)

¶1852

C. Special Options

* * * * *

*6. Last Sale Data Stream.....$500/month*
*Permits subscriber to process NASDAQ/NMS last data directly into its own computer system for analytic purposes. Subscriber is responsible for line and modem charges, and separate charges for any terminal display.*
*7. NQDS Data Stream.....$500/month*
*Permits subscriber to process NQDS quotation data directly into its own computer system for analytic purposes. Subscriber is responsible for line and modem charges, and separate charges for any terminal display.*

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the purposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

This proposed rule change would expand service offerings and establish a monthly charge of $500 for the receipt of a data stream (*i.e.*, a broadcast stream of information from the NASD's central processor) consisting of either NASDAQ/NMS last sale information or NQDS quotation information. The uses made of data stream information and the manner of their communication are distinguishable from vendor feeds provided by the NASD to support terminal devices capable of displaying real-time market data on demand or in a dynamic update mode. More specifically, data streams covered by this filing would be used to perform a variety of computerized analyses and computations that may be integral to a subscriber's business functions. These analyses/computations may be disseminated in some graphic or other derivative form via a screen display or in a hard copy format, depending upon the subscriber's business needs. As such, the NASD believes that pricing of data streams based upon a flat fee is more appropriate than the device-based charges levied on subscribers receiving real-time access to NASDAQ/NMS last sale and NQDS quotation information solely via screen displays. Approximately 30 subscribers are interested in receiving data streams of NASDAQ/NMS last sale information or NQDS quotation information to perform proprietary analytics. The NASD intends to furnish the request data streams subject to a subscriber's payment of the fees set forth in this filing.

The NASD submits that this proposed rule change is consistent with section 15A(b)(5) of the Act. That provision requires that the NASD rules "provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the [NASD] controls." The proposed monthly charge of $500 for each data stream parallels the existing charge levied on subscribers to NASDAQ Level I data stream and is believed sufficient to cover the costs associated with the expanded data stream offerings. Further, the proposed subscriber charges compare favorably to those now in effect for data streams of Network A and B last sale and consolidated quotation information, respectively. Finally, the NASD expects that the universe of potential data stream subscribers to be relatively small, perhaps no more than 50 firms. Hence, implementation of the proposed services and fees should not raise any significant policy or regulatory issues.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted in the preceding section, data stream information is used for internal analytics and computations that support a subscriber's business activities. This information will not be used to provide an on-line service, accessible through a terminal device, that would disseminate NASDAQ/NMS last sale data or NQDS information on a query basis or in the form of a dynamically updated display. (If data stream information were to be used to support such screen-based displays, the subscriber would also be required to pay the established NQDS charge of $50 per terminal per month.) The NASD's provision of data stream information does not constitute a service in competition with vendor services that deliver NASDAQ/NMS last sale and/or NASDAQ quotation information, on a real-time basis, to subscribers using prescribed terminal devices. Accordingly, the NASD reiterates that no impermissible burden on competition will result from the implementation of this proposed rule change.

*C. Self-Regulatory Organization's Statement on Comments on The Proposed Rule Change Received from Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making writting submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respects to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the number

in the caption above and should be submitted by April 4, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: March 6, 1991.

**Jonathan G. Katz,**

*Secretary.*

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 91-6103 Filed 3-13-91; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-28944; File No. SR-NYSE-91-05]**

## Self-Regulatory Organizations; Filing of Proposed Rule Changes by the New York Stock Exchange, Inc. Relating to Listing Criteria for Securities Other than Common Stocks and Bonds

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 24, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend §§ 703.12 *Warrant Listing Process*, 703.15 *Foreign Currency Warrants*, 703.17 *Index Warrants Listing Standards*, 703.18 *Contingent Value Rights*, and 703.19 *Other Securities*, of the Exchange's *Listed Company Manual* to standardize certain listing requirements for securities other than common stocks and bonds.[1] The minimum proposed standardized requirements for each of the Sections referenced above are: (1) 1 million securities outstanding; (2) 400 holders; (3) a one year life; and (4) $4 million in market value. The listing standards for the underlying securities however remain unchanged.

### II Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The Exchange has developed listing standards for a number of securities which are not traditional common stocks or bonds. These securities include common stock warrants, foreign currency warrants, index warrants, and special purpose securities not readily categorized as equity or debt.

The NYSE's security-related listing standards were developed in anticipation of the unique characteristics of each of these different securities. However, as new issues have been brought to market and experience has been gained with respect to the acceptance of the securities, it is apparent that these distinct requirements are unnecessary and confusing to issuers and underwriters. Under these circumstances, the NYSE deems it appropriate to standardize a number of these listing standards.

The Exchange believes that the proposed rule changes are consistent with section 6(b)(5) of the Act, which provides, in part, that the rules of the Exchange are to be designed to promote just and equitable principles of trade and to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NYSE believes that the proposed rule changes will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule changes.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule changes, or

(b) Institute proceedings to determine whether the propsoed rule changes should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 4, 1991.

Dated: March 5, 1991.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 91-6104 Filed 3-13-91; 8:45 am]

BILLING CODE 8010-01-M

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[1] In its filing, the Exchange also proposed to modify proposed § 703.20 governing the listing standards applicable to Units, Component Securities and Similar Securities which is contained in pending filing SR-NYSE-90-32. In order to consolidate all proposed rule changes dealing with proposed § 703.20, the Exchange has determined to consider the proposed changes to § 703.20 contained in file SR-NYSE-91-05 as an amendment to file SR-NYSE-90-32. *See* letter from Linda Simplicio, Vice-President, Division Counsel, Listed Company Compliance, NYSE, to Thomas Gira, Branch Chief, Options Regulation, Division of Market Regulation, SEC, dated February 4, 1991.

**Requests Under Review by Office of Management and Budget**

*Agency Clearance Officer:* Kenneth A. Fogash (202) 272–2142.
*Upon written request copy available from:* Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549–1002.
Extension, Rule 17a–8, File No. 270–53.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. section 3501 *et. seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17a–8 [17 CFR 240.17a–8] under the Securities Exchange Act of 1934 (15 U.S.C. section 78 *et. seq.*), which clarifies the authority of self-regulatory organizations to assure compliance by brokers and dealers with the requirements of the Currency and Foreign Transactions Reporting Act of 1970 [31 U.S.C. sections 1051–1143] (the "Currency Act") and the Department of the Treasury regulations promulgated thereunder. Approximately 6,000 broker-dealers are subject to the rule, which does not impose any burden in addition to that imposed under the Currency Act. (See File No. 1505–0063).

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235–0092), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 7, 1991.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 91–5984 Filed 3–13–91; 8:45 am]

BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

**Interest Rate**

**AGENCY:** Small Business Administration.

**ACTION:** Notice of interest rate.

**SUMMARY:** Pursuant to 13 CFR 108.503–8(b)(4), the maximum legal interest rate for a commercial loan which funds any portion of the cost of a project (see 13 CFR 108.503–4) shall be the greater of 6% over the New York prime rate or the limitation established by the constitution or laws of a given State. For a fixed rate loan, the initial rate shall be the legal rate for the term of the loan.

**Charles R. Hertzberg,**

*Assistant Administrator for Financial Assistance.*

[FR Doc. 91–5974 Filed 3–13–91; 8:45 am]

BILLING CODE 8025–01–M

## DEPARTMENT OF STATE

**[Public Notice 1362]**

**Secretary of State's Advisory Committee on Private International Law; Study Group on International Electronic Funds Transactions; Meeting**

The Advisory Committee study group on International Electronic Funds Transactions will hold a meeting on Tuesday, March 27th from 2:00 p.m. until 5:30 p.m. at the Federal Reserve Bank of New York, Legal Department, 33rd Floor conference room 59 Maiden Lane, New York, New York 10045.

The purpose of the meeting is to review progress by the United Nations Commission on International Trade Law (UNCITRAL) on the preparation of a draft Model Law on International Credit Transfers. The meeting will focus in particular on changes to the preceding draft of the Model Law made at the last session of the UNCITRAL Working Group on International Payments in December, 1990. The results of that meeting are available in a report by the UNCITRAL Secretariat in U.N., Doc. A/CN.9/344, January 10, 1991, which contains a revised draft of the Model Law. There also is available from the office indicated below a Report of the U.S. Delegation on the December UNCITRAL Working Group meeting.

The draft Model Law will be the principal topic at UNCITRAL's 24th Plenary Session scheduled in June 1991, and it is anticipated that this Session may conclude UNCITRAL's work on this topic. The study group meeting will therefore also focus on issues to be considered by the U.S. delegation to the 24th Plenary Session with regard to the possibility of the United States joining or opposing a consensus on the draft Model Law as it may be further at the 24th Plenary Session. It should be noted that a final text, should one be adopted at the Plenary Session, will be a non-binding model law and it's use as a model by particular countries will be entirely voluntary.

Additional information on the meeting, including copies of the draft Model Law and U.N. documents referenced therein and the Report of the U.S. Delegation referred to above, may be obtained from the Department of State by contacting Harold S. Burman, Office of the Legal Adviser (L/PIL), 2100 "K" Street, suite 402, Washington, DC 20037–7180, or by calling (202) 653–9852.

Members of the general public may attend up to the capacity of the meeting room and participate in the discussion subject to instructions of the chair. Since access to the meeting room will be controlled, persons wishing to attend should notify the Legal Adviser's Office at the number indicated above not later than March 22 of their name, affiliation, address and telephone number. Persons interested but unable to attend the meeting may submit written comments or proposals to the Office of the Legal Adviser at the address indicated above.

Publication of this notice less than fifteen days prior to the meeting was necessitated by the recent decision to hold a final study group meeting and the necessity to prepare preliminary U.S. views following the meeting prior to March 29 for transmission to UNCITRAL.

Dated: March 11, 1991.

**Peter H. Pfund,**

*Assistant Legal Adviser for Private International Law and Vice-Chairman, Secretary of State's Advisory Committee on Private International Law.*

[FR Doc. 91–6217 Filed 3–13–91; 8:45 am]

BILLING CODE 4710–06–M

## DEPARTMENT OF TRANSPORTATION

**Office of the Secretary**

**Reports, Forms, and Recordkeeping Requirements: Submittals to OMB on March 7, 1991**

**AGENCY:** Department of Transportation (DOT), Office of the Secretary.

**ACTION:** Notice.

**SUMMARY:** This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on March 7, 1991, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

**FOR FURTHER INFORMATION CONTACT:** John Chandler, Annette Wilson or Susan Pickrel, Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–4735, or Edward Clarke or Wayne Brough, Office of Management and Budget, New Executive Office

Building, room 3228, Washington, DC 20503, (202) 395–7340.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 3507 of title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

**Information Availability and Comments**

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

**Items Submitted for Review by OMB**

The following information collection requests were submitted to OMB on March 7, 1991.

*DOT No:* 3461.
*OMB No:* 2137–0047.
*Administration:* Research and Special Programs Administration.
*Title:* Transportation of Hazardous Liquids by Pipeline: Recordkeeping and Accident Reporting.
*Need for Information:* The recordkeeping is necessary to assure compliance with the regulations. The accident reporting is necessary to monitor the frequency and causes of accidents.
*Proposed Use of Information:* The information is used to evaluate the compliance of operators of hazardous liquid pipelines with the pipeline safety requirements of CFR part 195—Transportation of Hazardous Liquids by Pipeline.
*Frequency:* Recordkeeping and accident reporting functions are performed on the occasions that require those records or accident reports.
*Burden Estimate:* 49,219 hours.
*Respondents:* 210 pipeline operators.
*Form(s):* DOT 7000–1.
*Average Burden Hours Per Response:* 12 minutes.

*DOT No: 3462.*
*OMB No:* 2115–0039.
*Administration:* U.S. Coast Guard.
*Title:* Port Security Card.
*Need For Information:* This information collection requirement is needed to ensure that individuals who require access to waterfront facilities or vessels do not pose a threat to national security. This requirement is particularly applicable to those posts that are vital to the military defense or that support military operations or where explosive cargo is loaded.
*Proposed Use of Information:* The Coast Guard uses this information to conduct a national agency check for criminal history of civilians requiring access to certain areas by virtue of their employment as longshoremen, dock workers, construction workers, etc. It is an integral part of the Security Program which provides protection and security of vessels, harbors, etc., from sabotage and subversive activities.
*Frequency:* On occasion.
*Burden Estimate:* 1,000 hours.
*Respondents:* Civilian workers requiring access to vessels/ports.
*Form(s):* CG–2685.
*Average Burden Hours Per Response:* 15 minutes.

*DOT No:* 3463.
*OMB No:* 2115–0110.
*Administration:* U.S. Coast Guard.
*Title:* Vessel Documentation.
*Need for Information:* This information collection requirement is needed to establish a vessel's eligibility to (1) be documented as a U.S. vessel; (2) engage in particular trade; and (3) become the object for a preferred ship's mortgage.
*Proposed Use of Information:* The Coast Guard uses this information to determine if a vessel is eligible for benefits as a U.S. vessel. The Internal Revenue Service (IRS) also uses this information to determine eligibility for investment tax credits.
*Frequency:* On occasion.
*Burden Estimate:* 54,390 hours.
*Respondents:* 136,253.
*Form(s):* CG–1258, 1261, 1270, 1322, 1340, 1356, 4593, 1280.
*Average Burden Hours Per Response:* Burden is expressed in minutes per form as follows:

| | |
|---|---|
| CG–1258 | 30 |
| CG–1261 | 30 |
| CG–1280 | 5 |
| CG–1322 | 5 |
| CG–1340 | 20 |
| CG–1356 | 20 |
| CG–4593 | 10 |
| CG–1270 | Negligible. |

*DOT No:* 3464.
*OMB No:* 2127–0019.
*Administration:* National Highway Traffic Safety Administration.
*Title:* 49 CFR part 537, Automotive Fuel Economy Reports.
*Need for Information:* To see how the manufacturers are complying with average fuel economy standards.
*Proposed Use of Information:* Major domestic and foreign automobile manufacturers provide NHTSA with technical and fuel economy performance information which is examined to see how the manufacturer will comply with applicable average fuel economy standards. The information is reported to Congress and used to respond to inquiries, and evaluation of future standards.
*Frequency:* Semi-annually.
*Burden Estimate:* 4,500 hours.
*Respondents:* Manufacturers.
*Form(s):* None.
*Average Burden Hours Per Response:* 5 minutes.

*DOT No:* 3465.
*OMB No:* New.
*Administration:* Federal Railroad Administration.
*Title:* Class II and Class III Railroads Federal Load Guarantee Study.
*Need for Information:* To determine the need and demand for Federal loan guarantees by Class II and Class III railroads for the enhancement and rehabilitation of railroad facilities.
*Proposed Use of Information:* To prepare a report to Congress as requested in the Amtrak Reauthorization and Improvement Act of 1990.
*Frequency:* One time.
*Burden Estimate:* 1,000 hours.
*Respondents:* 500 Railroads.
*Form(s):* None.
*Average Burden Hours Per Response:* 2 hours.

*DOT No:* 3466.
*OMB No:* New.
*Administration:* National Highway Traffic Safety Administration.
*Title:* Influence of BAC Limits on Drinking and Driving Decisions.
*Need for Information:* NHTSA needs the results of this survey to evaluate BAC limits.
*Proposed Use of Information:* NHTSA is assessing how drivers make drinking and driving decisions and the role

current BAC limits have in these decisions by surveying 4,000 persons from the general public.

*Frequency:* One-Time only.

*Burden Estimate:* 958 hours.

*Respondents:* Individuals or households.

*Form(s):* None.

*Average Burden hours per Response:* 10½ minutes.

*DOT No:* 3467.

*OMB No:* 2127–0511.

*Administration:* National Highway Traffic Safety Administration.

*Title:* 49 CFR part 571.213, Child Restraint Systems.

*Need for Information:* To inform the consumer of the different models of child safety seats and how they are to be installed in passenger cars. Also to be able to reach the owner in the event of a recall.

*Proposed Use of Information:* Manufacturers are required to provide each child restraint with a permanently attached label and an instruction brochure which gives the model, manufacturer's name, date of manufacture, certification that the seat conforms with FMVSS 213, and owner's name and address in the event of a recall.

*Frequency:* On ocassion.

*Burden Estimate:* 60,300 hours.

*Respondents:* Manufacturers.

*Form(s):* None.

*Average Burden Hours Per Response:* 3 seconds.

*DOT No:* 3468.

*OMB No:* New.

*Administration:* Federal Railroad Administration.

*Title:* Locomotive Engineers' Activities Diary.

*Need for Information:* To assess the significance of various fatigue factors in human-error railroad accidents.

*Proposed Use of Information:* To understand how scheduling practices affect sleep, circadian rhythms, and fatigue levels of locomotive crews and to recommend improvements in crew management procedures.

*Frequency:* One Time.

*Burden Estimate:* 1,177 hours.

*Respondents:* 500 Locomotive Engineers.

*Form(s):* None.

*Average Burden Hours Per Response:* 2 hours and 21 minutes.

*DOT No:* 3469.

*OMB No:* 2133–0029.

*Administration:* Maritime Administration.

*Title:* Capital Construction Fund and Exhibits.

*Need for Information:* Required to obtain or retain a benefit.

*Proposed Use of Information:* To assure applicant qualifies for requested benefit under the statute.

*Frequency:* Annually.

*Burden Estimate:* 1,722 hours.

*Respondents:* 110.

*Form(s):* None.

*Average Burden Hours Per Response:* 13 hours and 29 minutes.

*DOT No:* 3470.

*OMB No:* New.

*Administration:* Federal Aviation Administration.

*Title:* Suspected Unapproved Parts Notification.

*Need for Information:* Submission of the Suspected Unapproved Parts Notification is necessary to ensure that only FAA-approved parts are installed, ensuring that continued airworthiness is maintained.

*Proposed Use of Information:* The information reported will be used by the FAA to determine if an unapproved part investigation is warranted.

*Frequency:* On occasion.

*Burden Estimate:* 450 hours.

*Respondents:* Anyone who suspects the use of an unapproved part.

*Form(s):* FAA Form 8120–11.

*Average Burden Hours Per Response:* 18 minutes.

*DOT No:* 3471.

*OMB No:* New.

*Administration:* Federal Aviation Administration.

*Title:* Phaseout of Stage 2 Airplanes Operating in the 48 Contiguous United States and the District of Columbia. (NPRM)

*Need for Information:* The information is needed to ensure complince with the law to phase out Stage 2 Airplanes.

*Proposed Use of Information:* The FAA will use the data to monitor and enforce compliance to phase out Stage 2 aircraft, and to keep the Congress and the public informed on the progress being made to achieve full and continued compliance.

*Frequency:* Annually.

*Burden Estimate:* 108 hours.

*Respondents:* Businesses.

*Form(s):* None.

*Average Burden Hours Per Response:* 1 hour for small airlines, and 2 hours for large airlines.

Issued in Washington, DC on March 7, 1991.

**Richard B. Chapman,**

*Acting Director of Information Resource Management.*

[FR Doc. 91–5993 Filed 3–13–91; 8:45 am]

BILLING CODE 4910–62–M

**[Order 91–3–17]**

## Application of Tropical Airways, Inc., for a Fitness Redetermination and Proposed Revocation of Certificate

**AGENCY:** Department of Transportation.

**ACTION:** Notice of order to show cause dockets 46773 and 43201.

**SUMMARY:** The Department of Transportation is directing all interested parties to show cause why it should not issue an order finding that Tropical Airways, Inc., has failed to demonstrate its continuing fitness, denying it application for a fitness redetermination, and revoking its certificate of public convenience and necessity authorizing it to engage in foreign scheduled air transportation between New York, New York, and Georgetown, Guyana.

**DATES:** Persons wishing to file objections should do so no later than March 25, 1991.

**ADDRESSES:** Objections and answers to objections should be filed in Docket 46773 and addressed to the Documentary Services Division (C–55, room 4107), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carol A. Szekely, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590 (202–366–9721).

Dated: March 8, 1991.

**Jeffrey N. Shane,**

*Assistant Secretary for Policy and International Affairs.*

[FR Doc. 91–5992 Filed 3–13–91; 8:45 am]

BILLING CODE 4910–62–M

**[Order 91–3–16 Docket No. 43232]**

## Clarifying Order

In re: Security of aircraft and safety of passengers transiting Lebanon.

Issued by the Department of Transportation on the 8th day of March, 1991.

On July 1, 1985, President Reagan issued Presidential Determination 85–14, pursuant to authority granted by Section 1114(a) of the Federal Aviation Act of 1958, as amended (Act) (49 U.S.C. 1514(a)). Among other things, Presidential Determination 85–14 "suspend[s] the rights of all air carriers within the meaning of Section 101(3) of the Act to engage in foreign air transportation, whether direct or

indirect (including through interline agreements), to and from Lebanon * * *." Presidential Determination 85–14 was published in the Federal Register on August 7, 1985 (50 FR 31,835).

In light of Presidential Determination 85–14, on July 2, 1985, the Department ordered all interested persons to show cause why it should not take action which specifically "would prohibit the sale in the United States of any airline ticket or the issuance in the United States of any airwaybill with Lebanon in the itinerary, regardless of whether the flight in question serves the United States * * *." (Order 85–7–15 at 1). After considering the comments, the Department finalized its proposed action by issuing Order 85–7–45 on July 9, 1985. Order 85–7–45 amends all U.S. air carrier certificates issued under section 401 (49 U.S.C. 1371), all foreign air carrier permits issued under section 402 (49 U.S.C. 1372), and all exemptions held by U.S. and foreign direct and indirect air carriers to preclude the "[sale] in the United States [of] any transportation by air which includes any type of stop in Lebanon * * *." (Order 85–7–45, Ordering Paragraph 1).

It has come to the attention of the Department that several domestic and international air freight forwarders in the United States continue to operate small package or document delivery services involving transportation by air to or from Lebanon. U.S. and foreign air freight forwarders are air carriers within the meaning of sections 101(3) and 101(22) of the Act (49 U.S.C. 1301(3), (22)), respectively, and generally hold exemptions from section 401 and 418 as well as section 402 of the Act, respectively, pursuant to parts 296 and 297 of the Department's regulations (14 CFR parts 296 and 297), respectively. Consequently, air freight forwarders are subject to the restricted operating authority set forth in Presidential Determination 85–14 and Order 85–7–45.

The Department is issuing this Order to make it clear to all concerned that Presidential Determination 85–14 and Order 85–7–45 apply to air freight forwarders in the U.S. and to the direct air carriers that provide them with air transportation services. By publishing this Order in the Federal Register, the Department places all such entities on clear notice that they are prohibited from selling in the United States any air transportation, including interline transportation, which includes any type of stop in Lebanon, and that they are subject to civil and criminal penalties for any violations of that prohibition. (See 49 U.S.C. 1471 and 1472).[1]

*Accordingly,*

1. The first sentence of Ordering Paragraph 1 of Order 85–7–45 is amended to read as follows:

> We amend all certificates issued under section 401 of the Federal Aviation Act, all permits issued under section 402, and all exemptions from sections 401 and 402, including those authorizing air freight forwarder activities, to add the following condition:
>
> * * * * *

2. This Order shall be published in the Federal Register.

Jeffrey N. Shane,

*Assistant Secretary for Policy and International Affairs.*

[FR Doc. 91–5991 Filed 3–13–91; 8:45 am]

BILLING CODE 4910–62–M

## Federal Aviation Administration

### Approval of Noise Compatibility Program Lawton Municipal Airport Lawton, OK

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Lawton Metropolitan Area Airport Authority under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On August 1, 1990, the FAA determined that the noise exposure maps submitted by the Lawton Metropolitan Area Airport Authority under part 150 were in compliance with applicable requirements. On January 25, 1991, the administrator approved the noise compatibility program. All of the recommendations of the program were approved.

**EFFECTIVE DATE:** The effective date of the FAA's approval of the Lawton Municipal Airport noise compatibility program is January 25, 1991.

**FOR FURTHER INFORMATION CONTACT:** Dean A. McMath, Department of Transportation, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas, 76193–0612, (817) 624–5594. Documents reflecting this FAA action may be reviewed at this same location.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA has given its overall approval to the noise compatibility program for Lawton Municipal Airport, effective January 25, 1991.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and

[1] Presidential Determination 85–14 and Order 85–7–45 apply to all air transportation to and from Lebanon, whether transportation of freight or of passengers. Therefore, the sales prohibition also applies to travel agents, since they act as sales agents for air carriers.

responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports Division Office in Fort Worth, Texas.

The Lawton Metropolitan Area Airport Authority submitted to the FAA on April 25, 1990, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from June 8, 1987 through June 4, 1990. The Lawton Municipal Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on August 1, 1990. Notice of this determination was published in the **Federal Register** on August 9, 1990.

The FAR part 150 Noise Exposure and Land Use Compatibility Program study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to (or beyond) the year 1995. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on August 1, 1990 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained three proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the administrator effective January 25, 1991. Outright approval was granted for all of the three program elements. The three elements include institution of a noise complaint system, a five-year update and review of the program, and the transition of noncompatible land uses to compatible land uses within the airport environs through zoning.

These determinations are set forth in detail in a record of approval endorsed by the Administrator on January 25, 1991. The record of approval as well as other evaluation materials, and the documents comprising the submittal are available at the FAA office listed above and at the administrative offices of the Lawton Metropolitan Area Airport Authority.

Issued in Forth Worth, Texas, February 6, 1991.

**Hugh W. Lyon,**

*Assistant Manager, Airports Division.*

[FR Doc. 91-6064 Filed 3-13-91; 8:45 am]

BILLING CODE 4910-13-M

## Radio Technical Commission for Aeronautics (RTCA); Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the meeting of the Executive Committee to be held March 27, 1991, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows:

(1) Chairman's introductory remarks; (2) Approval of the January 25, 1991, Executive Committee Meeting Minutes, RTCA Paper No. 52-91/EC-1062 (previously distributed); (3) Executive Director's report; (4) Special Committee activities report for January-February 1991, RTCA Paper No. 77-91/RE-765 (enclosed); (5) Fiscal and Management Subcommittee report; (6) Facilities Working Group report; (7) Award recommendations; (8) Consideration of proposals to establish new special committees; (a) Continental Airlines request to update DO-173, "Minimum Operational Performance Standards for Airborne Weather and Ground Mapping Pulsed Radars" (RTCA Paper No. 78-91/RE-766, enclosed); (9) Other business; (10) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 8, 1991.

**Steven Zaidman,**

*Designated Officer.*

[FR Doc. 91-6060 Filed 3-13-91; 8:45 am]

BILLING CODE 4910-13-M

## Radio Technical Commission for Aeronautics (RTCA); Ad Hoc Group 5, Airborne Loran-C Area Navigation Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the first meeting of the Ad Hoc Group 5 to be held April 10-12, 1991, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows:

(1) Introductory remarks; (2) Review and approve Terms of Reference, RTCA Paper No. 42-91/AG5-1 (enclosed); (3) Technical briefings; (4) Committee discussion on extent of the problem. Review of material provided; (5) Develop initial work program and schedule; (6) Assignment of tasks; (7) Other business; (8) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 8, 1991.

**Steven Zaidman,**

*Designated Officer.*

[FR Doc. 91-6061 Filed 3-13-91; 8:45 am]

BILLING CODE 4910-13-M

## Aviation System Capacity Advisory Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. I), notice is hereby given of a meeting of the Federal Aviation Administration Aviation System Capacity Advisory Committee to be held on Wednesday and Thursday, April 10 & 11, 1991. The meeting will take place at 9 a.m. in the MacCracken Room, 10th Floor, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

The agenda for this meeting is as follows:

- Ad hoc Procurement Working Group Report
- Aircraft Situation Display Working Group Report
- Briefing on Status of Real-Time Airspace Scheduling Program
- System Capacity Technology and Procedures Development Working Group Report
- FAA Response to August 25, 1990 Recommendations of the Advisory Committee

Attendance is open to the interested public, but limited to space available. With the approval of the Committee chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements or obtain information should contact Mr. James McMahon, Office of System Capacity and Requirements, ASC-1, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-7425.

Any member of the public may present a written statement to the Subcommittee at any time.

Issued in Washington, DC on March 7, 1991.

E.T. Harris,

*Director, Office of System Capacity and Requirements.*

[FR Doc. 91-6054 Filed 3-13-91; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF VETERANS AFFAIRS

### Information Collection Under OMB Review

**AGENCY:** Department of Veterans Affiars.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, VA Clearance Officer (723), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3172.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer on or before April 15, 1991.

Dated: March 6, 1991.

By direction of the Secretary.

Frank E. Lalley,

*Associate Deputy Assistant Secretary for Information Resources Polices and Oversight.*

Revision

1. Board of Veterans Appeals.
2. Titles of the Information Collections.
   a. Appeal to Board of Veterans Appeals.
   b. Withdrawal of Services by a Representative.
   c. Fee Agreements.
   d. Motion for Review of Expenses.
   e. Requests for Changes in Hearing Dates.
3. Department Form Numbers.
   a. VA Form 1-9, Appeal to Board of Veterans Appeals.
   b. Not applicable.
   c. Not applicable.
   d. Not applicable.
   e. Not applicable.
4. The information collection is judicial in nature and is required in processing appeals from denial of claims for VA benefits and in regulation of representatives' fees.
   a. VA Form 1-9 is used by individuals to file an appeal.
   b. The information is used to identify a representative who wishes to withdraw from the appeal process.
   c. The information is used to insure that fee agreements between VA claimants and either attorneys-at-law or agents are in fulfillment with statutory requirements.
   d. The information is used to insure that unreasonable attorney-at-law or agent fees are not charged against VA claimants.
   e. The information is used to maintain adequate control over hearing calendars.
5. On occasion.
6. Individuals or households; Businesses or other for-profit; Shall businesses or organizations.
7. 53,825 responses.
8. Estimate of Total Hours.
   a. Appeal to Board of Veterans Appeals—1 hour.
   b. Withdrawal of Services by a Representative—30 minutes.
   c. Fee Agreements—6 minutes (basic filing); 4 hours (motion filing).
   d. Motion for Review of Expenses—4 hours.
   e. Requests for Changes in Hearing Dates—10 minutes (basic request); 1 hour (requests requiring preparation of a motion).
9. Not applicable.

[FR Doc. 91-6047 Filed 3-13-91; 8:45 am]

BILLING CODE 8320-01-M

### Information Collection Under OMB Review

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (20A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addressees.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer on or before April 15, 1991.

Dated: March 8, 1991.

By direction of the Secretary.

**Frank E. Lalley,**

*Associate Deputy, Assistant Secretary for Information Resources Policies and Oversight.*

**Extension**

1. Veterans Benefits Administration.
2. Claim for Repurchase of Loan.
3. VA Form 26–8084.
4. The form is used and completed by the holder of a delinquent vendee account which has been guaranteed by VA. The holder may request VA to repurchase a loan.
5. On occasion.
6. Businesses or other for-profit.
7. 9,696 responses.
8. 30 minutes.
9. Not applicable.

[FR Doc. 91–6048 Filed 3–13–91; 8:45 am]

BILLING CODE 8320–01–M

## Information Collection Under OMB Review

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (20A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addresses.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer on or before April 15, 1991.

Dated: March 8, 1991.

By direction of the Secretary.

**Frank E. Lalley,**

*Associate Deputy, Assistant Secretary for Information Resources Policies and Oversight.*

**Extension**

1. Veterans Benefits Administration.
2. Request to Lender for Status Loan Account—LCS.
3. VA Form 26–8778.
4. This form is used by VA to obtain pertinent data from the servicer of guaranteed or insured loans and vendee loans sold with VA repurchase agreement on the status of loans in default. The information is used to assure that necessary action is taken to cure the default.
5. On occasion.
6. Small businesses or organizations.
7. 175,000 responses.
8. 10 minutes.
9. Not applicable.

[FR Doc. 91–6049 Filed 3–13–91; 8:45 am]

BILLING CODE 8320–01–M

# Sunshine Act Meetings

Federal Register
Vol. 56, No. 50
Thursday, March 14, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## FARM CREDIT ADMINISTRATION

### Farm Credit Administration Board; Special Meeting

**SUMMARY:** Notice if hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

**DATE AND TIME:** The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on March 14, 1991, from 10 a.m. until such time as the Board concludes its business.

**FOR FURTHER INFORMATION CONTACT:** Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

**ADDRESSES:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090

**SUPPLEMENTARY INFORMATION:** Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are: .

**Open Session**

*New Business*

1. *Consent Calendar*
   —CoBank—Third Party Financially Related Services
2. *Regulations*
   —Personnel Administration (Proposed)

**Closed Session***

*New Business*

3. Buckeye PCA and Fostoria FLBA applications for Charter Amendment to Expand Territory

Dated: March 11, 1991.

*Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(9) and (10).

**Curtis M. Anderson,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 91–6169 Filed 3–11–91; 4:31 pm]

BILLING CODE 6705–01–M

## FEDERAL ELECTION COMMISSION

**"FEDERAL REGISTER" NUMBER:** 91–5582.

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Tuesday, March 12, 1991, 10:00 a.m., Meeting Closed to the Public.

This Meeting Has Been Cancelled.

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Thursday, March 14, 1991, 10:00 a.m., Meeting Open to the Public.

The Following Item Has Been Added to the Agenda:

Legislation Recommendations—1991

**DATE AND TIME:** Tuesday, March 19, 1991, 10:00 a.m.

**PLACE:** 999 E Street, N.W., Washington, D.C.

**STATUS:** This Meeting Will Be Closed to the Public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

**DATE AND TIME:** Thursday, March 21, 1991, 2:00 p.m.

**PLACE:** 999 E Street, N.W., Washington, D.C. (Ninth Floor).

**STATUS:** This Meeting Will Be Open to the Public.

**ITEMS TO BE DISCUSSED:**

Correction and Approval of Minutes
Guidelines for Presentation in Good Order
Advisory Opinion 1991–02—Marc Scheineson on behalf of MCI Telecommunications Corporation
Convention Regulations—Final Rules and Draft Explanation and Justification
Administrative Matters

**PERSON TO CONTACT FOR INFORMATION:** Mr. Fred Eiland, Press Officer, Telephone: (202) 376–3155.

**Delores Harris,**

*Administrative Assistant, Office of the Secretariat.*

[FR Doc. 91–6279 Filed 3–12–91; 3:07 pm]

BILLING CODE 6715–01–M

## FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

**TIME AND DATE:** 10:00 a.m., Wednesday, March 20, 1991.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 12, 1991.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 91–6270 Filed 3–12–91; 2:55 pm]

BILLING CODE 6210–01–M

## MARINE MAMMAL COMMISSION

**TIME AND DATE:** The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet in executive session on Thursday, April 25, 1991, from 8:30 a.m. to 10:00 a.m. The public sessions of the Commission and the Committee meeting will be held on Thursday, April 25, from 10:00 a.m. to 5:45 p.m., on Friday, April 26, from 8:30 a.m. to 5:30 p.m., and on Saturday, April 27, from 9:00 a.m. to 1:00 p.m.

**PLACE:** The Red Lion Hotel, 300 112th Avenue S.E., Bellevue, Washington, 98004.

**STATUS:** The executive session will be closed to the public. At it, matters relating to personnel, the internal practices of the Commission, and international negotiations in process will be discussed. All other portions of the meeting will be open to public observation. Public participation will be allowed if time permits and it is determined to be desirable by the Chairman.

**MATTERS TO BE CONSIDERED:** The Commission and Committee will meet in public session to discuss a broad range of marine mammal matters. While subject to change, major issues that the Commission plans to consider at the meeting include: national and international response plans for marine mammal die-offs; high seas driftnet fisheries; the status of marine mammals in Alaska; the status (preparation, review, approval, and implementation of

research and management programs) of recovery and conservation plans; and ongoing negotiations and activities pursuant to international agreements.

**SUPPLEMENTARY INFORMATION:** This is a second notice of the Commission's April 1991 meeting and does not constitute any change in the scheduling, location, or agenda. The matters to be considered are those which were originally published in the December 12, 1990 (55 FR 51200) notice.

**CONTACT PERSON FOR MORE INFORMATION:** John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 1825 Connecticut Avenue, N.W., Room 512, Washington, D.C. 20009, 202/653–6237.

Dated: March 11, 1990.

**John R. Twiss, Jr.**

*Executive Director.*

[FR Doc. 91–6183 Filed 3–12–91; 11:26 am]

BILLING CODE 6820–31–M

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**MISSISSIPPI RIVER COMMISSION**

**TIME AND DATE:** 9:00 a.m., April 8, 1991.

**PLACE:** On board MV MISSISSIPPI at foot of Eighth Street, Cairo, IL.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Memphis District.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Rodger D. Harris, telephone 601–634–5766.

**Rodger D. Harris,**

*Executive Assistant, Mississippi River Commission.*

[FR Doc. 91–6231 Filed 3–12–91; 1:31 pm]

BILLING CODE 3710–GX–M

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**MISSISSIPPI RIVER COMMISSION**

**TIME AND DATE:** 9:00 a.m., April 9, 1991.

**PLACE:** On board MV MISSISSIPPI at City Front, Memphis, TN.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; and (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Rodger D. Harris, telephone 601–634–5766.

**Rodger D. Harris,**

*Executive Assistant, Mississippi River Commission.*

[FR Doc. 91–6232 Filed 3–12–91; 1:31 pm]

BILLING CODE 3710–GX–M

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**MISSISSIPPI RIVER COMMISSION**

**TIME AND DATE:** 9:00 a.m., April 10, 1991.

**PLACE:** On board MV MISSISSIPPI at City Front, Greenville, MS.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Vicksburg District.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Rodger D. Harris, telephone 601–634–5766.

**Rodger D. Harris,**

*Executive Assistant, Mississippi River Commission.*

[FR Doc. 91–6233 Filed 3–12–91; 1:31 pm]

BILLING CODE 3710–GX–M

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**MISSISSIPPI RIVER COMMISSION**

**TIME AND DATE:** 8:30 a.m., April 12, 1991.

**PLACE:** On board MV MISSISSIPPI at Foot of Prytania Street, New Orleans, LA.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in New Orleans District.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Rodger D. Harris, telephone 601–634–5766.

**Rodger D. Harris,**

*Executive Assistant, Mississippi River Commission.*

[FR Doc. 91–6234 Filed 3–12–91; 1:31 pm]

BILLING CODE 3710–GX–M

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**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**

**TIME AND DATE:** 10:00 a.m., Thursday, April 11, 1991.

**PLACE:** Room 410, 1825 K Street, NW., Washington, DC 20006.

**STATUS:** Open Meeting.

**MATTERS TO BE CONSIDERED:** Oral Argument before the Commission in—

Wyman-Gordon Company
OSHRC Docket No. 84–0785

**CONTACT PERSON FOR MORE INFORMATION:** Mrs. Mary Ann Miller (202) 634–4015.

Dated: March 11, 1991.

**Earl R. Ohman, Jr.,**

*General Counsel.*

[FR Doc. 91–6287 Filed 3–12–91; 3:27 am]

BILLING CODE 7600–01–M

# Corrections

Federal Register
Vol. 56, No. 50
Thursday, March 14, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Rural Electrification Administration

### 7 CFR Part 1710

**RIN 0572-AA43**

### Borrower Eligibility for Different Types of Loans

*Correction*

In proposed rule document 91-3833 beginning on page 6912, in the issue of Wednesday, February 20, 1991, make the following corrections:

**§ 1710.102 [Corrected]**

1. On page 6931, in the first column, in § 1710.102(e)(2)(iv), in the first line, "measures" should read "measured".

2. On the same page, in the second column, in § 1710.102(f)(1)(i), in the second line, after "(v)," insert "(vi),".

3. In the third column, in § 1710.102(g)(5), in the next to last line, after "increase" insert "a".

BILLING CODE 1505-01-D

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### 32 CFR Part 811

**RIN 0701-AA28**

### Release, Dissemination, and Sale of Visual Information Materials

*Correction*

In rule document 91-565 beginning on page 953 in the issue of Thursday, January 10, 1991, make the following corrections:

**§ 811.8 [Corrected]**

1. On page 955, in § 811.8(a), in the table, make the following corrections:

a. The headings for the last four columns are corrected to read as follows:

| | Price per print (quantity) | | | |
|---|---|---|---|---|
| | 1–9 | 10–20 | 21–50 | 50+ |
| | | | | |

b. In the entries for "Print mounted on 16″ × 20″ cardboard" and "Print mounted on 20″ × 24″ cardboard", the entries in the first column are correctly revised to read "$8.00" and "$12.00" respectively.

c. In the last six entries, the footnote references in the last three columns should be removed.

d. In footnote 1, "limit price per unit" is correctly revised to read "limit price of print".

e. In footnote 2, "16." is correctly revised to read "16.00".

BILLING CODE 1505-01-D

federal register

Thursday
March 14, 1991

Part II

# Department of Health and Human Services

## Office of Human Development Services

**Fiscal Year 1991 Coordinated Discretionary Funds Program; Availability of Funds and Request for Applications; Notice**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Human Development Services

**[Program Announcement No. HDS-91-1]**

### Fiscal Year 1991 Coordinated Discretionary Funds Program; Availability of Funds and Request for Applications

**AGENCY:** Office of Human Development Services, HHS.

**ACTION:** Announcement of availability of funds and request for applications under the Office of Human Development Services' Coordinated Discretionary Funds Program.

**SUMMARY:** The Office of Human Development Services (HDS) announces its Coordinated Discretionary Funds Program (CDP) for Fiscal Year 1991. Funding for HDS grants and cooperative agreements under this announcement is authorized by legislation governing discretionary programs of the following HDS components: Administration for Children, Youth and Families; Administration for Native Americans; and the Office of Policy, Planning and Legislation. This announcement contains forms and instructions for submitting an application.

**DATES:** The closing date for submittal of applications under this announcement is May 20, 1991.

**ADDRESSES:** Application receipt point: Department of Health and Human Services, HDS/Grants and Contracts Management Division, 200 Independence Avenue, SW., Room 724–F, Washington, DC 20201–0001, Attn: HDS–91–1.

**FOR FURTHER INFORMATION CONTACT:** Department of Health and Human Services, HDS/Office of Policy, Planning and Legislation, Division of Research and Demonstration, 200 Independence Avenue, SW., Room 724–F, Washington, DC 20201–0001. Telephone (202) 755–4560. To provide 24-hour coverage, calls to this number may be answered by an answering machine.

**SUPPLEMENTARY INFORMATION:** This program announcement consists of three parts. Part I provides information on Departmental and HDS initiatives, programs and statutory funding authorities applicable to this announcement, additional HDS discretionary program announcements anticipated this fiscal year, planned technical assistance workshops and materials for prospective applicants, resource centers and clearinghouses, and innovation conferences. Part II describes applicant eligibility, the review process, the evaluation criteria, other relevant priority area information, and the programmatic priorities under which applications are being solicited. Part III provides information and instructions for the development and submission of applications.

The forms to be used for submitting an application follow part III. Please copy and use these forms in submitting an application under this announcement. *No additional application materials are available or needed to submit an application.* All of the information and forms required to submit an application are contained in this announcement.

Applicants should note that grants to be awarded under this program announcement are subject to the availability of funds.

**Table of Contents**



## Part I—Introduction

### *A. Goals of the Office of Human Development Services*

The program and staff offices within the Office of Human Development Services differ in the populations they serve and in the programs they administer, but share the following common goals:

• To increase family and individual self-sufficiency and independence through social and economic development strategies;

• To target Federal assistance to those most in need;

• To improve the accountability of HDS administered programs, and the effectiveness and efficiency of both internal management and State and locally administered social services; and

• To improve the quality of HDS programs and services while encouraging innovation and choice through the marketplace.

Increased specialization, categorical programs, and the diversity of services and providers at the local level have increased the need for effective communication, networking, and cooperation among all concerned, particularly those at the level where services are delivered, to increase program effectiveness, maximize the use of existing resources, and avoid duplication or fragmentation of services.

Program accountability and innovation are essential to more adequately address complex social issues and to help more individuals and families to reduce their dependency.

The importance of new ways to address the needs of vulnerable individuals and families is increasing as fiscal constraints strain the capacity of existing programs. HDS realizes that agencies serving our target populations must have access to innovations in a usable form. HDS supports and encourages the dissemination and replication of project findings and models for successful innovations. HDS' Coordinated Discretionary Funds Program attempts to take a coordinated approach at the Federal level to promote the achievement of these goals.

*B. Office of Human Development Services Initiatives*

Within the context of these broad goals, the Assistant Secretary for HDS has identified four initiatives for special emphasis:

• *Permanency Planning*—to promote a sustained commitment to family life; to the care and nurturing of our Nation's young; and to the sound social, emotional, physical and cognitive development of our most vulnerable children.

• *Coordinated Services*—to encourage integration of services among specialized service providers to eliminate fragmentation, reduce duplication, and produce more effective responses in serving individuals and families.

• *Self-sufficiency*—to promote or structure programs to help individuals and families overcome crises by developing and/or providing services which will enable them to gain independence and sustain themselves and their families without need for further intervention.

• *Innovative Services*—to develop innovative approaches to service delivery systems, based on current challenges and circumstances affecting families.

*C. The Office of Human Development Services' Program and Staff Offices*

Below is a brief description of the HDS organizational components and the programs from which funding is available.

Administration for Children, Youth and Families

The Administration for Children, Youth and Families (ACYF) serves as the focal point within the Federal Government for programs, activities, and initiatives designed to improve the quality of life for children, youth and families. ACYF administers the following major programs which relate to discretionary grants made under this announcement:

• *Head Start* provides comprehensive educational, health, nutritional, social and other services primarily to low-income preschool children, age three to the age of compulsory school attendance, and their families. An essential feature of every Head Start program is the involvement of parents.

• *Runaway and Homeless Youth* addresses the crisis needs of runaway and homeless youth and their families through the establishment or strengthening of community-based programs providing outreach, temporary shelter, counseling, and aftercare services. It also provides support to coordinated networks designed to share information, expertise, and resources among service providers; and to a toll-free, 24-hour National Runaway Switchboard which serves as a neutral channel of communication between young people and their families as well as a source of referral to needed services.

• *Transitional Living Program for Homeless Youth* provides shelter (for up to 18 months) and related services to homeless youth in order to promote a successful transition to self-sufficient living and to prevent long-term dependency on public assistance. Services, which include training in the areas of life skills, interpersonal skills, educational advancement, job attainment skills, and mental and physical health care, are provided to youth ages 16 through 21 who are truly homeless (that is, youth who have no safe place of residence and who are not currently under the jurisdiction of the juvenile justice or child welfare systems).

• *Child Welfare Research and Demonstration* provides financial support to State and local governments or other nonprofit institutions, agencies, and organizations engaged in research or demonstrations in the field of child welfare. Research and demonstrations supported under this program address preventive intervention, the development of alternative placements for children such as foster care or adoption, and reunification services so that children can return home if at all possible.

• *Child Welfare Training* provides discretionary grants to accredited public or other nonprofit institutions of higher learning to develop and improve educational and training programs and to assist child welfare agencies to upgrade skills and qualifications of staff.

• *Adoption Opportunities* provides financial support for demonstration projects to improve adoption practices, to eliminate barriers to adoption and to find permanent homes for children, particularly children with special needs.

• *Temporary Child Care for Children With Disabilities and Crisis Nurseries* provides demonstration grants to States to assist private and public agencies in developing: (a) Temporary child care (respite care) for children with disabilities; and (b) crisis nurseries for children at risk of child abuse and neglect.

• *Child Abuse and Neglect* discretionary activities are designed to assist and enhance national, State, and community efforts to prevent, identify, and treat child abuse and neglect. These activities include conducting research and demonstrations; supporting service improvement projects; gathering, analyzing and disseminating information through a national clearinghouse; and coordinating Federal activities related to child abuse and neglect.

Administration for Native Americans

The Administration for Native Americans (ANA) promotes the goal of social and economic self-sufficiency for American Indians, Native Hawaiians, Native Alaskans and Native American Pacific Islanders. ANA defines self-sufficiency as the level of development at which a Native American community can control and internally generate resources to provide for the needs of its members and meet its own short and long range social and economic goals.

Administration on Developmental Disabilities

The Administration on Developmental Disabilities is the principal agency in the Federal government to help ensure that all persons with developmental disabilities can receive the services and other assistance and opportunities necessary to enable them to achieve their maximum potential through increased independence, productivity, and integration into the community. Under the Projects of National Significance grant program, support is provided to public and private nonprofit organizations and agencies for research and demonstration, technical assistance and data collection.

Office of Policy, Planning and Legislation

The Office of Policy, Planning and Legislation (OPPL) is a staff office in HDS which administers the following

discretionary grant programs under this announcement:

• *Social Services Research and Demonstration* grants and cooperative agreements are awarded for innovative research and demonstration projects that are responsive to the HDS program priorities. This program promotes the demonstration of effective and innovative social services for dependent and vulnerable populations such as the poor, the aged, children and youth, Native Americans and persons with disabilities.

• *Family Violence Prevention and Services Act* provides grants to States and Indian Tribes to prevent family violence and provide immediate shelter and related assistance to victims of family violence and their dependents. Demonstration grants also support efforts to prevent family violence and provide training and technical assistance to States and Indian Tribes.

*D. Statutory Authorities Covering This Announcement*

The following is a list of each HDS program included in this announcement with the specific statutory authority, the Catalog of Federal Domestic Assistance (CFDA) number, and related priority areas:

| Program and statutory authority | CFDA No. | Related priority areas |
|---|---|---|
| *Abandoned Infants Assistance Program:* Abandoned Infants Assistance Act of 1988 (42 U.S.C. 670 note) | 93.551 | 1.28 |
| *Adoption Opportunities:* Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, as amended (42 U.S.C. 5113 et seq.). | 93.652 | 1.17, 1.18, 1.19, 1.20, 1.22, 1.23, 1.24, 1.25 |
| *Child Abuse and Neglect:* Child Abuse Prevention and Treatment Act, as amended (42 U.S.C. 5101 et seq.) | 93.670 | 1.32, 1.33, 1.34, 1.35, 1.36 |
| *Child Welfare Research and Demonstration:* Section 426 of the Social Security Act, as amended (42 U.S.C. 626) | 93.608 | 1.11, 1.12, 1.13, 1.14, 1.15, 1.16, 1.29, 1.30, 1.31 |
| *Child Welfare Training Grants:* Section 426 of the Social Security Act, as amended (42 U.S.C. 626) | 93.648 | 1.10 |
| *Family Violence Prevention and Services:* Family Violence Prevention and Services Act, as amended (42 U.S.C. 10401 et seq.). | 93.671 | 3.04 |
| *Head Start:* Head Start Act, as amended (42 U.S.C. 9801 et seq.) | 93.600 | 1.01, 1.02, 1.03, 1.04, 1.05, 1.06 |
| *Native Americans Programs:* Native American Programs Act of 1974, as amended (42 U.S.C 2291 et seq.) | 93.612 | 2.01, 2.02, 2.03, 2.04 |
| *Runaway and Homeless Youth:* Runaway and Homeless Youth Act, as amended (42 U.S.C. 5701 et seq.) | 93.623 | 1.07, 1.08, 1.09 |
| *Social Services Research and Demonstration:* Section 1110 of the Social Security Act, as amended (42 U.S.C. 1310) | 93.647 | 3.01, 3.02, 3.03 |
| *Temporary Child Care for Children with Disabilities and Crisis Nurseries:* Temporary Child Care for Children with Disabilities and Crisis Nurseries Act of 1986, as amended (42 U.S.C. 5117). | 93.656 | 1.24A, 1.26B, 1.27 |
| *Transitional Living Program for Homeless Youth:* Part B of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5714–1 et seq.). | 93.550 | 1.09 |

*E. Other Office of Human Development Services Announcements*

Additional FY 1991 HDS discretionary grant program announcements which have been published or will be published at a later date are listed below with the telephone number to contact for further information:

| | |
|---|---|
| Aging: | |
| Special Programs for the Aging—Title IV—Training, Research and Discretionary Projects and Programs | (202) 619–0441 |
| Children, Youth and Families: | |
| Head Start—Transition Projects | (202) 245–0509 |
| Head Start—Parent and Child Centers | (202) 245–0405 |
| Runaway and Homeless Youth—Basic Centers | (202) 245–0102 |
| Transitional Living Program for Homeless Youth | (202) 245–0102 |
| Emergency Child Protection Grant Program | (202) 245–0586 |
| Developmental Disabilities: | |
| Projects of National Significance | (202) 245–1961 |
| University Affiliated Programs | (202) 245–1961 |
| Native Americans: | |
| Financial Assistance for Alaskan Native Social and Economic Development Projects | (202) 245–7730 |
| Financial Assistance for American Indian, Native Hawaiian, Alaskan Native and Native American Pacific Islanders Social and Economic Development Projects | (202) 245–7730 |

*F. Principles of the Coordinated Discretionary Funds Program*

For the past nine years, HDS has issued a coordinated discretionary funds program announcement combining the research, demonstration and training initiatives for several HDS programs. The priority areas identified in this announcement derive from HDS' legislative mandates, as well as agency and Departmental goals and initiatives. The priorities reflect the state of current knowledge as well as emerging issues which come to HDS' attention by several means, including public comment, and consultation with advocates, policymakers, and practitioners in the field. The priorities seek to focus attention on and to encourage research and demonstration efforts to obtain new knowledge and improvements in service delivery for the solution of particular social problems and to promote the utilization of the knowledge and model practices.

The principles which underlie the HDS research and demonstration program include the following:

• *Human service needs are best defined and addressed through institutions and organizations at the local community level.* Public agencies, private and voluntary organizations, the business sector, community institutions, families and clients must all share in finding solutions to protect the vulnerable and to reduce dependence on public programs.

• *Social problems are complex.* Better use should be made of existing knowledge, resources and services. Differing perspectives of specialists and practitioners offer the promise of better

and more timely solutions and service delivery. Interagency coordination can help to avoid duplication and fragmentation of services to maximize utilization of existing resources and to promote joint solutions to benefit clients.

• *Administrators and service providers at all levels must be accountable for investment of resources, programs and services under their direction.* Knowledge of one's own and others' prior efforts and experience needs to be applied to maximize the benefits of new and ongoing resource investments. Objectives and measures of progress must be clear. Monitoring, evaluation and information feedback are necessary to modify practice, improve program performance, assure greater accountability and achieve better outcomes.

• *Both applied research and demonstration efforts are needed to solve emerging social issues.* Research is needed to help in understanding social phenomena and emerging issues, and to measure the results of past and ongoing efforts. Demonstrations are needed to put existing knowledge into practice, and to develop and test new models in practice. Translation of research into practice is essential to progress; experience in practice is essential to guide research. More rigorously structured research and demonstration studies promise more definitive answers to policy and programmatic questions.

• *Dissemination and utilization of the results and findings of research and demonstration projects are essential to progress.* The benefits of investments made in research and demonstration efforts depend on the application of findings, experience, and products in both policy and practice. Well-reasoned and thoughtful reports of experiences, both positive and negative, help to inform policymakers, researchers, professionals, and practitioners. Well-articulated negative experience can help others to avoid similar pitfalls; positive accounts help to avoid unnecessary repetition, allow for implementation of tested approaches or replication for further validation, and permit others to build on successes.

• *Projects typically have multiple audiences which can benefit from their results.* The type of information needed by various audiences can best be utilized if it is tailored to their needs or expressed in language familiar to them. Audiences which can benefit from project results need to be identified at the outset of the project. When feasible, it is useful to engage such audiences in dialogue early in the project. Their perspectives can be useful in shaping the project to yield the information which will be most helpful to them, and to encourage their interest and support in the effort.

*G. Technical Assistance Workshops for Prospective Applicants*

Workshops to provide guidance and technical assistance to prospective applicants will be held in Washington, DC and in various other cities. These workshops may be specifically beneficial to organizations which have not previously participated in the CDP. *If you plan to attend, please call the contact for the workshop location of your choice listed below.* Information on the workshops is as follows:

| | |
|---|---|
| Atlanta, GA | May 1, 1991, 9:30 a.m.–12:30 p.m., 19th Floor Conference Room, 101 Marietta Tower, Contact Danny Osburn at (404) 331–2287. |
| Dallas, TX | April 24, 1991, 10 a.m.–1 p.m., Rm. 1010, 1200 Main Tower Building, Contact Betty Simmons at (214) 767–4540. |
| Denver, CO | April 19, 1991, 8:30 a.m.–12 noon, Rm. 239, Federal Office Building, 20th and Stout Streets, Contact Harry Frommer at (303) 844–2622. |
| Kansas City, MO | April 24, 1991, 8:30 a.m.–12 noon, Westin Crown Center Hotel, One Pershing Road, Contact Dan Sakata at (816) 426–3981. |
| New York, NY | April 29, 1991, 10 a.m.–1 p.m., Room 305 (Third Floor), 26 Federal Plaza, Contact Junius Scott at (212) 264–3473. |
| Portland, OR | Contact Judith Wood in the HDS, Regional Office at (206) 553–2430. |
| San Francisco, CA | April 17, 1991, 9 a.m.–12 noon, 50 United Nations Plaza, Room 406, Contact George Buford at (415) 556–7800. |
| Seattle, WA | Contact Judith Wood in the HDS, Regional Office at (206) 553–2430. |
| Washington, DC | April 17, 1991, 1 p.m.–4 p.m., Auditorium, Hubert H. Humphrey Building, 200 Independence Avenue SW., Contact (202) 755–4560. |

Lincoln University of Pennsylvania and Grambling State University of Louisiana are providing technical assistance and training in grant proposal development for Historically Black Colleges and Universities (HBCUs) and minority organizations. Several workshops have been held so far, either individually by Lincoln and Grambling or in collaboration at locations throughout the country. Additional technical assistance sessions will be scheduled following the publication of this announcement. For further information regarding the upcoming workshops, interested HBCUs and minority organizations may contact:

Dr. Mapule F. Ramashala, Project Director, Grantsmanship and Development Institute, Lincoln University, 4601 Market Street, Philadelphia, Pennsylvania 19139, Telephone (215) 476–6668

or:

Dr. V.T. Samuel, Department of Sociology, Grambling State University, P.O. Box AF, Grambling, Louisiana 71245, Telephone (318) 274–3306

*H. Technical Assistance Materials*

A *Sample Application* containing the narrative section of a funded application and related evaluative comments has been adapted by HDS to assist prospective applicants in developing better applications through an understanding of what HDS considers to be the essential attributes of a strong project narrative. A copy of this publication will be sent to you upon request by calling (202) 755–4560 or writing to: Office of Policy, Planning and Legislation, Division of Research and Demonstration, 200 Independence Avenue, SW., Room 724–F, Washington, DC 20201–0001. Also, copies of the *Sample Application* will be available for distribution at the scheduled workshops listed under section G.

Additionally, a copy of the videotape "How to be a Winner" is available to interested individuals and organizations. The videotape is 30 minutes long and outlines the basic concepts for preparing a successful application for HDS—one that is funded. Anyone who wishes to receive a copy of the videotape should send a blank VHS tape to: Office of Policy, Planning and Legislation, Division of Research and Demonstration, 200 Independence Avenue, SW., Room 724–F, Washington, DC 20201–0001.

*I. Resource Centers and Clearinghouses*

HDS funds one clearinghouse and ten resource centers located throughout the country. These resources may be of

assistance when applying for grants related to child welfare and domestic abuse. The following is a list of the resource centers and clearinghouse:

Clearinghouse on Child Abuse and Neglect and Family Violence Information, P.O.Box 1182, Washington, DC 20013, (703) 821–2086

National Center for the Prevention and Treatment of Child Abuse and Neglect C. Henry Kempe Center, University of Colorado, Health Sciences Center, 1205 Oneida Street, Denver, CO 80220, (303) 321–3963

Center for Children and the Law, American Bar Association, 1800 M Street, NW., Third Floor South Lobby, Washington, DC 20036, (202) 331–2250

National Resource Center for Family Based Services, University of Iowa, School of Social Work, N240 Oakdale Hall, Oakdale, IA 52319, (319) 335–4123

National Resource Center for Special Needs Adoption, A Division of Spaulding for Children, 3660 Waltrous Road, P.O. Box 337, Chelsea, MI 48118, (313) 475–8693

National Resource Center on Child Sexual Abuse, 11141 Georgia Avenue, Suite 310, Wheaton, MD 20902, (301) 949–5000

National Resource Center, Institute for Children and Families, Eastern Michigan University, Ypsilanti, MI 48197, (313) 487–0372

National Resource Center on Child Abuse and Neglect, American Association for Protecting Children, American Humane Association, 63 Inverness Drive East, Englewood, CO 80112, (303) 792–9900, 1–800–227–5242

National Child Welfare Resource Center for Management and Administration, University of Southern Maine, 246 Deering Avenue, Portland, ME 04102, (207) 780–4430

National Resource Center for Youth Services, University of Oklahoma, 202 West Eighth Street, Tulsa, OK 74119, (918) 585–2986

National Resource Institute on Children and Youth with Handicaps, CDMRC, Room 417, University of Washington, Mailstop WJ–10 Seattle, WA 98195, (206) 685–1280

In addition, the University of Texas is an excellent resource for information on family violence. To obtain information, contact:

Family Violence Research and Treatment Program, The University of Texas, Tyler, Department of Psychology, 3900 University Blvd., Tyler, TX 75701, (214) 566–7060

*J. Conferences on Human Service Innovations*

The Office of Human Development Services periodically sponsors conferences in various locations around the country to showcase findings and products of funded projects in specific topical areas. The proposed list of meetings to be held this year is as follows:

| Location | Topic | Contact |
|---|---|---|
| Atlanta, GA | Literacy | Sherrill Ritter, (404) 331–2139. |
| Chicago, IL | Runaway and Homeless Youth—A Time for Change . . . Identifying and Addressing the Needs of Today's Runaways. | William Sullivan, (312) 353–4241. |
| Dallas, TX | Innovative Projects | Paul Milan, (214) 767–4540. |
| Kansas City, MO | Institute on Innovations in Human Services | Dan Sakata, (816) 426–3981. |
| New York, NY (Sheraton Centre Hotel, 811 Seventh Avenue, 52nd Street). | Meeting the Challenges in Child Welfare Services | Junius Scott, (212) 264–3473. |
| Philadelphia, PA (Holiday Inn) | Head Start Families in Crisis: Tackling Substance Abuse. | William Wilson, (215) 596–0369. |
| Spokane, WA | Economic and Social Development of Native Americans. | Judith Wood, (206) 442–2430. |
| Central Massachusetts (Worcester) | Adoption | Laurentina Janey-Burrell, (617) 565–1142. |
| | Impact of Substance Abuse on Children and Families | Laurentina Janey-Burrell, (617) 565–1142. |
| Colorado | Child Abuse and Neglect Issues | Charles Graham, (303) 844–3106. |

**Part II—The Review Process and CDP Priority Areas**

*A. Eligible Applicants*

Before applications are reviewed, each application will be screened to determine that the applicant organization is an eligible applicant as specified under the selected priority area. Applications from organizations which do not meet the eligibility requirements for the priority area will not be considered or reviewed in the competition and the applicant will be so informed.

Each priority area description contains information about the types of organizations which are eligible to apply under that priority area. Only that type of organization is eligible to apply under that particular priority area. Since eligibility varies among priority areas depending on statutory provisions, it is critical that you read carefully the "Eligible Applicants" section under each specific priority area. Applications from organizations which do not meet the eligibility requirements for the specific priority area will not be accepted or included in the review process.

Only organizations, *not individuals*, are eligible to apply under any of the priority areas. On all applications developed jointly by more than one organization, the applicant must identify only one organization as the lead organization and official applicant. The other participating organizations can be included as co-participants, subgrantees, or subcontractors.

For-profit organizations may be eligible to apply for certain grants under the authority of the Native American Programs Act, the Runaway and Homeless Youth Act, and the Head Start Act. For-profit organizations are also eligible to participate as subgrantees or subcontractors with eligible nonprofit organizations under all of the priority areas.

Any nonprofit agency which has not previously received HDS support must submit proof of nonprofit status with its grant application. The nonprofit agency can accomplish this by either making reference to its listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations or submitting a copy of its letter from the IRS under IRS Code section 501(c)(3). HDS cannot fund a nonprofit applicant without acceptable proof of its status.

*B. Review Process and Funding Decisions*

Applications that are submitted by the deadline date and are from eligible applicants will be reviewed and scored competitively. Experts in the field, generally persons from outside of the Federal Government, will use the evaluation criteria listed later in this part to review and score the applications. The results of this review

are a primary factor in making funding decisions.

HDS reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal Government or the applicant. HDS may also solicit comments from other Federal agencies, Central and Regional Office staff, interested foundations, national organizations, specialists, experts, States and the general public. These comments, along with those of the expert reviewers, are considered by the Assistant Secretary for Human Development Services and the HDS Senior Staff in making funding decisions.

In making decisions on awards, the Assistant Secretary and the HDS Senior Staff may give preference to applications which focus on or feature: Minority populations; a substantially innovative strategy with the potential to improve theory or practice in the field of human services; a model practice or set of procedures that holds the potential for utilization by organizations involved in the administration or delivery of human services; substantial involvement of volunteers; substantial involvement (either financial or programmatic) of the private sector; a favorable balance between Federal and non-Federal funds available for the proposed project; the potential for high benefit for low Federal investment; a programmatic focus on those most in need; and/or substantial involvement in the proposed project by national or community foundations.

To the greatest extent possible, efforts will be made to ensure that funding decisions reflect an equitable distribution of assistance among the States and geographical regions of the country, rural and urban areas, and ethnic populations. In making these decisions, the Assistant Secretary and HDS Senior Staff may also take into account the need to avoid unnecessary duplication of effort.

*C. Evaluation Criteria*

The evaluation criteria correspond to the outline for the development of the Program Narrative Statement of the application. Applications will be reviewed by a panel of at least three reviewers, primarily experts from outside the Federal Government, using the criteria below. Applicants should assure that they address each minimum requirement in the priority area description under the appropriate section of the Program Narrative Statement.

Reviewers will determine the strengths and weaknesses of each proposal in terms of the four evaluation criteria listed below, provide comments and assign numerical scores accordingly. The point value following each criterion heading indicates the maximum numerical weight that each section will be given in the review process.

1. Objectives and Need for Assistance (20 Points)

The application pinpoints any relevant physical, economic, social, financial, institutional, or other problems requiring a solution; demonstrates the need for the assistance; states the principal and subordinate objectives of the project; provides supporting documentation or other testimonies from concerned interests other than the applicant; and includes and/or footnotes relevant data based on the results of planning studies. It identifies the precise location of the project and area to be served by the proposed project. Maps and other graphic aids may be attached.

2. Results or Benefits Expected (20 Points)

The application identifies the results and benefits to be derived, the extent to which they are consistent with the objectives of the proposal and indicates the anticipated contributions to policy, practice, theory and/or research. The proposed project costs are reasonable in view of the expected results.

3. Approach (35 Points)

The application outlines a sound and workable plan of action pertaining to the scope of the project and details how the proposed work will be accomplished; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements; and provides for projections of the accomplishments to be achieved. It lists the activities to be carried out in chronological order, showing a reasonable schedule of accomplishments and target dates.

To the extent applicable, the application identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate the results and successes of the project. It describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The application also lists each organization, agency, consultant, or other key individuals or groups who will work on the project, along with a description of the activities and nature of their effort or contribution.

4. Staff Background and Organization's Experience (25 Points)

The application identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background, and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project. The application describes the relationship between this project and other work planned, anticipated or underway by the applicant with Federal assistance.

*D. Priority Area Description*

Each priority area description is composed of the following sections:

- *Eligible Applicants:* This section specifies the type of organization which is eligible to apply under the particular priority area. Specific restrictions are also noted, where applicable.
- *Purpose:* This section presents the basic focus and/or broad goal(s) of the priority area.
- *Background Information:* This section briefly discusses the legislative background, as well as the current state-of-the-art and/or current state-of-the-practice that supports the need for the particular priority area activity. Relevant information on projects previously funded by HDS and/or other State models are noted, where applicable. Some priority areas specify individuals to contact for more information.
- *Minimum Requirements for Project Design:* This section presents the basic set of issues that must be addressed in the application. Typically, they relate to project design, evaluation, and community involvement. This section also asks for specific information on the proposed project. Inclusion and discussion of these items is important since it will be used by the reviewers in evaluating the applications. Project products, continuation of the project effort after the Federal support ceases, and dissemination/utilization activities, if appropriate, are also addressed.
- *Project Duration:* This section specifies the maximum allowable length of time for the project period; it refers to the amount of time for which Federal funding is available.

• *Federal Share of Project Costs:* This section specifies the maximum amount of Federal support for the project.

• *Matching Requirement:* This section specifies the minimum non-Federal contribution, either through cash or in-kind match, that is required in proportion to the maximum Federal funds which can be requested for the project.

• *Anticipated Number of Projects To Be Funded:* This section specifies the number of projects that HDS anticipates it will fund in the priority area.

Please note that applicants that do not comply with the specific priority area requirements in the section on "*Eligible Applicants*" will not be included in the review process. Applicants should also note that non-responsiveness to the section "*Minimum Requirements for Project Design*" will result in a lower evaluation score by the panel of expert reviewers.

Applicants must clearly identify the specific priority area under which they wish to have their applications considered, and tailor their applications accordingly. Previous experience has shown that an application which is broader and more general in concept than outlined in the priority area description is less likely to score as well as one which is more clearly focused on and directly responsive to the concerns of that specific priority area.

*E. Available Funds*

HDS intends to award new grants and cooperative agreements resulting from this announcement during the third and fourth quarters of fiscal year 1991 and the first and second quarters of fiscal year 1992, subject to the availability of funding. The size of the actual awards will vary. Each priority area description includes information on the maximum Federal share of the project costs and the anticipated number of projects to be funded.

The term "budget period" refers to the interval of time (usually 12 months) into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes. The term "project period" refers to the total time a project is approved for support, including any extensions.

HDS encourages applications seeking grant awards smaller than the allowable Federal maximum, or shorter in duration than the maximum project period, consistent with achieving the goals of the project.

For multi-year projects, continued Federal funding beyond the first budget period is dependent upon proof of satisfactory performance and the availability of funds from future appropriations.

*F. Grantee Share of Project Costs*

Other than the exceptions described below, HDS does not make grant awards covering the entire project cost. Federal funds will be provided to cover up to 75% of the total allowable project costs. Therefore, the non-Federal share must amount to at least 25% of the total (Federal plus non-Federal) project cost. This means that for every $3 in Federal funds received, up to the maximum amount allowable under each priority area, applicants must contribute at least $1.

For example, the cost breakout for a project costing $100,000 to implement would be:

| Federal request | Non-federal share | Total cost |
|---|---|---|
| $75,000 | $25,000 | $100,000 |
| 75% | 25% | 100% |

*Exceptions:* The first exception to the grantee cost sharing requirement relates to projects funded under the Native American Programs Act. Successful applicants funded under this Act must contribute $1 for every $4 in Federal grant funds received up to the maximum specified in the priority area description. This non-Federal grantee share amounts to at least 20% of the entire project cost. For example, the project cost breakout for a $100,000 project would be:

NATIVE AMERICAN PROGRAMS ACT

| Federal request | Non-federal share | Total cost |
|---|---|---|
| $80,000 | $20,000 | $100,000 |
| 80% | 20% | 100% |

Applicants requesting funds under the Native American Programs Act (priority areas 2.01, 2.02, 2.03 and 2.04) should note that, if necessary, they may also include in their applications a request to the Administration for Native Americans for a waiver of the non-Federal cost-sharing requirement for the project based on the criteria specified in 45 CFR 1336.50(b). Each request will be reviewed on a case-by-case basis under the applicable laws and regulations. However, Native American organizations and Tribes applying under other priority areas must meet the cost-sharing requirement for the priority area.

The second exception pertains to projects to be funded under priority area 1.07, Enhancing the Proficiency of Youth Service Workers and Runaway and Homeless Youth Service Providers, which requires a 10% non-Federal match or cost sharing.

The third exception relates to applications originating from American Samoa, Guam, the Virgin Islands, Palau, and the Commonwealth of the Northern Mariana Islands. Applications from these areas are covered under Section 501(d) of Public Law 95–134, which requires that the Department waive "any requirement for local matching funds under $200,000."

The final exception pertains to projects to be funded under the following priority areas, which also require no non-Federal match or cost sharing:

1.01 Head Start and University Partnerships
1.02 Correlates of Positive Outcomes for Different Types of Head Start Children and Families
1.03 Support for Graduate Students: The Head Start Research Fellows Program
1.12 Cooperative Agreement to Provide an Active Focus on Permanency Planning
1.22 Assistance to States to Improve Adoption Data
1.27 National Resource Center for Crisis Nurseries and Respite Care Programs
1.30 Field Initiated Research in Child Welfare by Recent Recipients of Doctoral Degrees
1.31 Field Initiated Research in Child Welfare
1.34 Research on Juvenile Sexual Offenders
1.35 Graduate Research Fellowships in Child Abuse and Neglect
1.36 Field Initiated Research for Child Abuse and Neglect

The applicant contribution must always be secured from non-Federal sources, except for American Indian Tribes and Native American organizations. The non-Federal share of total project costs may be in the form of grantee-incurred costs and/or third party in-kind contributions. HDS strongly encourages applicants to propose a grantee share that is more than 25% of total project costs. HDS also encourages applicants to meet their match requirement through a cash contribution, as opposed to an in-kind contribution. For further information on in-kind contributions, refer to the instructions for completing the SF 424A—Budget Information, in part III.

The required amount of non-Federal share to be met by the applicant is the amount indicated in the approved application. Grant recipients will be required to provide the agreed upon non-Federal share, even if this exceeds 25% (or other required portion) of the project costs. Therefore, an applicant should ensure any amount proposed as match prior to inclusion in its budget.

The non-Federal share must be met by a grantee during the life of the project. Otherwise, HDS will disallow any unmatched Federal funds.

*G. Cooperation in Evaluation Efforts*

Grantees funded under particular priority areas may be requested to cooperate in evaluative efforts funded by HDS. A statement is included in the priority area description of those priority areas involving common HDS-funded evaluators. The purpose of these evaluation activities is to learn from the combined experience of multiple projects funded under a particular priority area. To the degree possible, grantees under these priority areas will be expected to coordinate their data gathering efforts with one another, as appropriate, under the direction of the HDS-supported evaluator.

*H. Closed Cautioning for Audiovisual Efforts*

Applicants are encouraged to include "closed captioning" in the development of any audiovisual products.

*I. Public Comments*

The Child Abuse and Neglect and Runaway and Homeless Youth Programs published their proposed priority areas for comment in the **Federal Register** on October 3, 1990 (55 FR 192, Page 40439). The final priorities selected for both programs included 'in this announcement reflect consideration of the comments and recommendations received from the public on the proposed priorities published in October. For additional information on the public comments relative to the Child Abuse and Neglect Program, see the discussion immediately preceding the priority area descriptions under the Administration for Children, Youth and Families. The discussion of the comments received relative to the proposed priority areas for the Runaway and Homeless Youth Program was published separately in the **Federal Register** on January 3, 1991.

*J. Indexes of Priority Areas*

To assist potential applicants in the use of this announcement, HDS has included two indexes. For easy reference, the first index lists the priority areas as they relate to specific subject/program areas. The second index lists all of the priority areas in numerical order.

*FY 1991 Priority Area Subject Index*



*List of the FY 1991 Priority Areas*

(1) Administation for Children, Youth and Families

Head Start Bureau



Family and Youth Services Bureau



Children's Bureau

1.31 Field Initiated Research in Child Welfare

National Center on Child Abuse and Neglect

1.32 Collaborative Arrangements Between State Child Welfare Agencies and State Title IV-A Agencies to Train Job Opportunity and Basic Skills (JOBS) Participants to Work as Child Protective Services Paraprofessionals
1.33 National Resource Centers on Child Abuse and Neglect
1.34 Research on Juvenile Sexual Offenders
1.35 Graduate Research Fellowships in Child Abuse and Neglect
1.36 Field Initiated Research for Child Abuse and Neglect

(2) Administration for Native Americans

2.01 Stabilizing Markets for Indian Manufacturing Companies
2.02 Environmental Protection
2.03 Developing a Model for Native American Veterans to Access Services
2.04 Developing an Holistic Native American Community Model to Combat Substance Abuse

(3) Office of Policy, Planning and Legislation

3.01 Community Coalitions to Plan for Change
3.02 Correctional Facilities as an Intervention Point with Drug-Addicted Pregnant Women
3.03 Transfer of International Innovations
3.04 Public Information/Community Awareness Activities for the Prevention of Family Violence

*K. CDP Priority Areas*

1. Administration for Children, Youth and Families

*Head Start Bureau*

1.01 Head Start and University Partnerships

*Eligible Applicants:* Universities and four-year colleges.

*Purpose:* To develop new knowledge that will enhance the effectiveness of Head Start and other early childhood programs in serving children and families.

*Background Information:* As this Nation's foremost child and family development program, one of Head Start's mandates is the support of new research which will enhance Head Start's effectiveness and then informing other early childhood development programs of the findings of the research. One of Head Start's most significant features is its enormous variability. Across programs it varies in the methods by which services are delivered and the populations that are served. Within programs the children and families vary in their levels of functioning, ethnicity, and other variables which interact with program interventions. With the increase in substance abuse and AIDS, Head Start programs are now faced with increasing variability in the types of problems and disabilities with which children enter the program. The Head Start population offers a unique opportunity for research which will contribute to understanding the differences in this diverse population and how to effectively tailor services and interventions for children and families with different characteristics.

HDS is interested in funding projects which actively engage universities in research and/or demonstration efforts directed to the issues described below which will be conducted with Head Start populations and which use Head Start programs as study sites.

Research is needed on the particular learning styles, social development, and developmental trajectories of children and on indicators of family functioning as they are manifested in specific' cultural and/or linguistic groups, among children with specific' disabilities, and among families at different levels of functioning. Research is also needed on appropriate intervention strategies for these particular groups.

One of the major obstacles to conducting effective research in Head Start is the lack of suitable instruments for measuring child and family functioning for different subpopulations. There is a need to identify and adapt promising instruments that have been used in small studies on non-Head Start populations and/or on older children, or to develop new ones where no such instruments exist.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

- Propose one or more research questions which will contribute to the knowledge base targeted under this priority area.
- Place the proposed project in the context of previous research or existing knowledge. A strong and convincing rationale for the need for the proposed project should be supported by specific results from any relevant planning studies, pilot studies, or other preparatory work conducted by the applicant.
- Describe the research design and any proposed statistical analyses with a discussion of the proposed measurement instruments, surveys, interviews, observation procedures or other data collection procedures.
- Provide evidence of the applicant's ability to conduct the research or evaluation component of the project.
- Identify the Head Start programs with which the applicant institution would collaborate in the conduct of he research.
- Describe the population served by these programs including size, ethnicity, income levels, percent of single parent families, welfare status and other relevant information.
- Provide assurances of the local Head Start programs' willingness to participate in and to comply with all aspects of the research design (e.g., random assignment of children, if appropriate).
- Provide assurances that the principal investigator or another appropriate staff member would attend two 2–3 day meetings in Washington, DC each year.

*Project Duration:* The length of the project must not exceed 36 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $100,000 for the first 12-month budget period or a maximum of $300,000 for a 3-year project period.

*Matching Requirement:* There is no matching requirement.

*Anticipated Number of Projects to be Funded:* It is anticipated that five projects will be funded.

1.02 Correlates of Positive Outcomes for Different Types of Head Start Children and Families

*Eligible Applicants:* Universities and four-year colleges.

*Purpose:* To develop new knowledge concerning the relationship of program, family and community variables which predict positive outcomes for different types of Head Start children and families during Head Start and in future years.

*Background Information:* Although the short-term effects of Head Start on the children served have been well documented, the literature suggests that there is a decline in these effects by the end of the third grade. Although the number of longitudinal studies of Head Start effects is small and these studies contain methodological weaknesses, the findings are compatible with those of a larger body of literature on the "fourth grade slump" for low-income children. These studies shared a common methodology of comparing children who attended Head Start with low-income children who did not and treated Head Start as a monolithic program and Head Start children and families as a homogeneous population. One of Head Start's significant features, however, is its enormous variability. It varies across programs in the methods by which services are delivered, the populations that are served and the conditions existing within the community. Within

programs, children and families vary in their level of functioning, ethnicity and other variables which interact with program interventions. None of these factors were given consideration in earlier Head Start studies as variables which might foster or attenuate positive effects.

Head Start is embarking on a new generation of research which examines such questions as "What works best for children and families with different characteristics under what conditions?" and "What program, family and community variables foster positive effects in Head Start and in future years?" In continuing this trend, we know that many Head Start families and children continue to thrive long after the Head Start experience. What are the relationships between program experiences, family characteristics, and community variables that set them apart from those who do not?

HDS is interested in funding longitudinal, ecological studies in which investigators will examine these issues with specific Head Start subpopulations.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

- State the hypotheses which would be investigated in the study.
- Present the major study variables, along with a strong rationale for the selection of the variables, for the specific population under consideration.
- Present the previous research or existing knowledge on which the selection of the variables is based.
- Describe the study design including research methods; sample selection; proposed measurement instruments, surveys, interviews, observation procedures or other data collection procedures; and proposed analyses.
- Provide evidence of the applicant's ability to conduct the proposed research.
- Identify the Head Start programs in which the applicant would conduct the research and provide assurance of the programs' willingness to participate and to comply with all aspects of the research design.
- Describe the characteristics of the Head Start sample that would be involved in the study including size, ethnicity, income levels, family composition, welfare status and other relevant information.
- Provide assurances that the principal investigator would be willing to participate in a consortium with the investigators of other projects funded under this priority area for the purposes of coordinating and integrating the studies.
- Provide assurances that the principal investigator or another appropriate staff member would attend two 2–3 day meetings in Washington, DC each year to meet with investigators of other projects funded under this priority area.

*Project Duration:* The length of this project must not exceed 60 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $100,000 for the first 12-month budget period or a maximum of $500,000 for a 5-year project period.

*Matching Requirement:* There is no matching requirement.

*Anticipated Number of Projects to be Funded:* It is anticipated that five projects will be funded.

1.03 Support for Graduate Students: The Head Start Research Fellows Program

*Eligible Applicants:* Institutions of higher education on behalf of qualified doctoral candidates enrolled in the sponsoring institution. To be eligible to administer the grant on behalf of the student, the institution must be fully accredited by one of the regional accrediting commissions recognized by the Department of Education and the Council on Post-Secondary Accreditation.

*Purpose:* To provide support for graduate students to conduct research with Head Start populations which will contribute to the knowledge base for improving services for Head Start children and families.

*Background Information:* A large body of literature exists on the early years of the Head Start program. A significant number of these studies consist of dissertations and other research conducted by graduate students. Most of this literature consists of studies on the effectiveness of the Head Start program comparing children who were enrolled in Head Start with low-income children who did not receive Head Start services. These studies generally considered Head Start to be a monolithic program and Head Start children and families were treated as a homogeneous population.

A new generation of Head Start research is needed that recognizes the great diversity among Head Start programs and the populations which it serves. Although Head Start delivers a core set of services which are defined by the Head Start Program Performance Standards, there is wide variability across programs in the methods by which these services are delivered. Within programs children and families vary in their levels of functioning, ethnicity and other variables which interact with program interventions. The Head Start population offers a unique opportunity for research which will contribute to understanding the differences of this diverse population and how to effectively tailor services and interventions for children and families with different characteristics.

Research is needed on the particular learning styles, the cognitive and social development, and the developmental trajectories of children and on indicators of family functioning as they are manifested in specific cultural and/or linguistic groups, children with specific disabilities, and families at different levels of functioning. In addition, suitable measures of child, adult and family functioning must be identified and adapted for specific subgroups of this diverse population.

HDS is interested in supporting doctoral-level students, through their sponsoring institutions, who are now conducting or wish to conduct research on the Head Start population, and which will contribute to the literature.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

- Provide evidence of the candidate's ability to conduct the research including education, employment experiences, publications, and information on current academic status. A letter of support from a sponsoring faculty member must also be provided.
- Propose one or more research questions which will contribute to the body of knowledge about Head Start children, families and programs.
- Place the proposed project in the context of previous research or existing knowledge, with a strong and convincing rationale for the need for the proposed project.
- Present specific results from any relevant planning studies, pilot studies, or other preparatory work conducted by the candidate.
- Describe the research design that would be employed and any proposed statistical analyses as well as the proposed measurement instruments, surveys, interviews, observation procedures or other data collection procedures that would be used.
- Identify the Head Start program(s) in which the research would be conducted and describe the characteristics of the Head Start sample including size, ethnicity, income levels, family composition, welfare status and other relevant variables.
- Provide assurances of the local Head Start program's participation in

the plan for the study and its agreement to participate in the study.

• Provide assurances that the grant would be used to pay a stipend to the candidate; some dependent allowances; any appropriate university fees; and major project costs for conducting the proposed research including any necessary travel.

• Consider, because of the small amount of these awards, waiving any overhead or indirect costs.

• Provide assurances that the candidate would attend one 2–3 day meeting of the Head Start Research Fellows in Washington, DC each project year.

*Project Duration:* The length of the project must not exceed 24 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $10,000 for the first 12-month budget period or a maximum of $20,000 for a 2-year project period.

*Matching Requirement:* There is no matching requirement.

*Anticipated Number of Projects to be Funded:* It is anticipated that five projects will be funded. No individual university will be funded for more than one candidate.

1.04 Increasing the Involvement of Males in Head Start

*Eligible Applicants:* Head Start grantees.

*Purpose:* To demonstrate approaches for meaningfully involving male family members in the Head Start program and for increasing their participation in the program. The males to be targeted are those who have a significant nurturing role for the child in Head Start, including fathers, grandfathers, uncles or other men in the household.

*Background Information:* Head Start programs consistently report a lack of male parent involvement in their programs. Very little is known about successful approaches for increasing the involvement of males in Head Start, and what effects their involvement has on their children. A basic premise in Head Start is that parental involvement in the educational process benefits young children. However, since the inception of Head Start in 1965, family members participating in the programs' activities have predominantly been mothers or other female relatives of the children. More information is needed about:

• The incidence of male participation in Head Start programs;

• The successful strategies used to involve males in the program;

• The approaches for maintaining males' interest in the program; and

• What impact male involvement has on children, on other family members, and on the Head Start program.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

• Provide evidence of the need for meaningful male involvement in its Head Start program.

• Describe how the proposed demonstration project would provide information to address the questions regarding the participation of males in Head Start that are raised in the preceding section under this priority area.

• Describe the new roles that would be created, or expanded, for males in the Head Start program, the specific components in which these activities or responsibilities would be located, and the targeted number of males to be involved and how they would be recruited, trained and supervised.

• Describe how the demonstration project would be evaluated and by whom, the measures that would be employed to determine its effectiveness and the results of increased male participation.

• Provide assurances that the demonstration project would participate with other projects funded under this priority area in an external evaluation supported and managed by the Head Start Bureau in Washington, DC.

• Provide assurances that the director of the project or another appropriate staff member would attend an annual 2–3 day meeting in Washington, DC to meet with staff from other projects funded under this priority area.

*Project Duration:* The length of the project must not exceed 36 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $75,000 for the first 12-month budget period or a maximum of $225,000 for a 3-year project period.

*Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $225,000 is $75,000 for a 3-year project period. This constitutes 25 percent of the total project budget.

*Anticipated Number of Projects to be Funded:* It is anticipated that up to five projects will be funded.

1.05 Demonstrating the Use of Technology for the Benefit of Children With Disabilities in Head Start

*Eligible Applicants:* Head Start grantees in collaboration with other public and private agencies and organizations which have expertise and experience in using current technologies and techniques to help young children with disabilities.

*Purpose:* To demonstrate the use of technology to (1) meet the needs of children with disabilities in Head Start, Parent Child Centers and Head Start programs serving migrants and Indians; and (2) meet the needs of Head Start staff for training in "mainstreaming" children with disabilities.

*Background Information:* The development of technology has expanded the possibilities for more effectively addressing the needs of children with disabilities and for "mainstreaming" them in a Head Start setting. For example, the use of computers with developmentally appropriate software has proven effective in fostering the social integration and the development of communication and friendships among very small children. To date, however, Head Start has not used computers and other advanced technology with children with disabilities except in a few instances, and usually in special cooperative projects with other organizations.

Head Start currently serves more than 68,000 children with disabilities and their families each year. Many of these children have severe disabling conditions which require training for teachers and other program staff. It is believed that training on the state-of-the-art of computers and other technologies for Head Start staff can enhance their ability to integrate children with disabilities into the Head Start program and to provide services to meet their special needs. The health, business and military sectors have already used modern technology, including interactive videos, for the provision of training, finding it capable of being both individualized and cost-effective after initial developmental costs. This priority area seeks to support "cutting edge" demonstrations of relevant new technologies in serving children with disabilities and in providing training to early childhood staff to more effectively serve these children.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

• Indicate familiarity with current best practices in the field of early childhood/special education and in the use of technologies in "mainstreaming" disabled children in these settings and in staff training.

• Provide evidence that the application has been jointly developed with one or more partners from the

private and/or public sector which has appropriate experience in using assistive technology to provide staff training and to work with children with disabilities and their parents. The commitment of resources from one or more of these partners to the project must also be demonstrated.

• Describe, as applicable, the training that would be provided to the Head Start staff who would implement the use of assistive technology with children whose Individual Education Plans (IEPs) call for the use of such technology. Additionally, describe, as applicable, the training that would be provided staff on meeting the special needs of children with disabilities, especially speech and language impairments, in "mainstreamed" community-based settings.

• Describe the uses to be made of these technologies in working with children with disabilities within the Head Start program.

• Describe the evaluation that would be conducted of the demonstration effort in order to assess the effectiveness of the training provided to staff and the services provided to children, including the specific techniques and measures that would be used.

*Project Duration:* The length of the project must not exceed 36 months.

*Federal Share of the Project Costs:* The maximum Federal share is not to exceed $100,000 for the first 12-month budget period or a maximum of $300,000 for a 3-year project period.

*Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $300,000 is $100,000 for a 3-year project period. This constitutes 25 percent of the total project budget.

*Anticipated Number of Projects to be Funded:* It is anticipated that up to three projects will be funded.

1.06 Head Start Satellite Training Technology

*Eligible Applicants:* Public television stations in partnership with the early childhood education community.

*Purpose:* To demonstrate the effectiveness of training clusters of Head Start classroom teaching teams through interactive education via satellite technology in selected remote geographical areas (remote rural areas, instream migrants, Indian reservations, and Alaskan villages) where Head Start centers are sufficiently scattered or small in size to make conventional training strategies inappropriate and costly.

*Background Information:* As the largest comprehensive child development program funded by the Federal government, Head Start provides ongoing training and technical assistance to staff to improve their skills and their understanding of their roles and responsibilities within the Head Start program.

Each Head Start classroom has a trained teacher, a classroom aide, and to the extent possible, a volunteer. They work together as a team in meeting the needs of each child. These classroom teams are located in over 26,000 classrooms nationwide in over 1,900 community-based Head Start programs.

Since some of these programs are on Indian reservations, in the Territories, in the migrant stream, and in isolated rural areas, the need for training strategies which will assist in providing comprehensive classroom training support is crucial. The use of interactive education via satellite technology is one such strategy which Head Start is interested in exploring.

Applicants may wish to consider the educational content in the Child Development Associate Competency Goals and Functional Areas and the Head Start "Guide for the Head Start Classroom Team" in developing their applications.

*Minimum Requirements for Project Design:* In order to compete successfully under this priority area, the application should:

• Present a strong and convincing rationale for the need for the proposed project and its relevance to the training needs of Head Start classroom teaching teams in specific geographically remote areas.

• Include information on relevant experiences with training projects in geographically remote areas using interactive education via satellite technology. The discussion should cover the purposes and outcomes of these projects and how they are similar to or different from what is proposed for Head Start. Of particular interest is information on the developmental and operating costs of similar projects and how those costs compare with this proposed effort.

• Identify geographically remote sites where clusters of Head Start grantees would participate in this demonstration. Describe the specific clusters of programs which would be trained together, including the number of clusters and numbers of classroom teams which would be trained, and specify over what period of time they would be trained during the project.

• Describe the partnerships which would be established with the early childhood community and the activities in which they would participate.

• Identify by name the proposed members of an advisory board for the project which would include experts from the fields of early childhood education, early childhood special education, health education, multicultural education, parent involvement, adult literacy, and substance abuse education specialists, including representation from the proposed sites. Describe the role of the advisory board in developing the training program and curriculum and in assisting in monitoring the project. Include a schedule of meetings for the advisory board.

• Describe the relevant and appropriate interactive educational technologies via satellite that would be used in this project.

• Describe how the teaching curriculum would be developed, including the proposed content, how the demonstration sites would be involved and how the project would assure that the curriculum would fully meet the Head Start educational standards. The content of the training that would be provided should focus on helping Head Start staff provide high quality, developmentally appropriate educational services while also assisting them to develop their skills in working with parents to support their roles as the primary educators of their children. The training curriculum should cover the principles and practices of child growth and development from birth to age 5 so that it meets the training needs of Head Start programs which serve infants and toddlers as well as those which serve preschoolers.

• Describe arrangements to provide college credit for participants.

• Describe the teaching strategies which would be used to implement the curriculum and how they would be reflective of the populations to be trained. For example, if the use of model classrooms is proposed, provide a description of how the model classrooms would be developed, located, and staffed so that they are relevant to the culture and geographic location of the clusters to be trained. Describe the follow-up activities/strategies which would be undertaken to assure that the training results are sustained.

• Provide a timetable with milestones for developing and implementing the project.

• Provide for the third party independent evaluation of the project that would begin simultaneously with the award of the project. Describe the proposed evaluation design, including any statistical analyses that would be

employed to measure the effectiveness of the technologies used with specific groups to be trained.

• Describe how costs for the development and implementation of the project would be met. Describe hardware and other resources which are already available, contributions which can be expected from local public TV stations and any other resources which can be tapped. Describe how the use of equipment and facilities previously paid for with Federal funds could reduce costs.

• Provide letters which specify the participation or collaboration with or contribution to the project, as appropriate, from other public television stations, proposed Head Start grantees in remote geographical areas which are interested in cluster training, any other partners proposed for participation in the project and contributors of resources or funds to the project.

• Provide assurances that the principal investigator, third party evaluator, and other appropriate staff would attend quarterly meetings in Washington, DC each year of the project.

*Project Duration:* The length of the project must not exceed 36 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $813,300 for the first 12-month budget period or a maximum of $2,439,900 for a 3-year project period.

*Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $2,439,900 is $813,300 for a 3-year project period. This constitutes 25 percent of the total project budget.

*Anticipated Number of Projects to be Funded:* It is anticipated that one project will be funded.

*Family and Youth Services Bureau*

1.07 Enhancing the Proficiency of Youth Survival Workers and Runaway and Homeless Youth Service Providers

*Eligible Applicants:* Statewide and regional nonprofit organizations, and combinations of such organizations, with demonstrated experience in providing services to runaway and homeless youth service providers.

*Purpose:* To improve the capacity of public and private agencies to provide services to runaway and homeless youth by assisting such agencies establish and operate runaway and homeless youth centers and by enhancing the proficiency of professional youth workers. Applications to provide such assistance may cover one or more Federal Regions or may be restricted to a smaller geographic area (e.g., one or more States).

*Background Information:* It is estimated that approximately one million young Americans under the age of 18 run away or leave home each year and stay away at least one night. A recent study by the General Accounting Office estimates that approximately 20 percent of these youth may be truly homeless; that is, they have no safe shelter or parent or guardian to return to even if they wished.

The dangers associated with living in an unprotected manner, away from home and parents or guardians, are considerable. While on the streets, many of these youth become involved in, or are at risk of becoming involved in, drug and alcohol abuse as users or as distributors or both. In other cases, drug or alcohol abuse precipitates runaway behavior. Evidence suggests a steady increase in drug use among this population and increases in accompanying health and related problems.

While there has been a decrease in the use of marijuana among youth aged 18–25 over the past five years, there has been a simultaneous and marked increase in the use of more dangerous and addictive drugs such as cocaine and crack. San Francisco, Washington, DC, New York City and many other cities report a crack cocaine epidemic. In San Francisco, admissions to Community Substance Abuse Services tripled from 1985 to 1987 and increased 79 percent in 1988. An increase in the abuse of alcohol among younger adolescents has also occurred. This is of particular concern because alcohol is often a "gateway" drug to more serious substance abuse.

While on the streets, these youth are also at risk of sexual exploitation and other violence (e.g., assault and robbery) that has become increasingly common in both urban and rural settings. Additionally, almost half of these youth have severe emotional and self-image problems, including depression, with the accompanying risk of suicide. Approximately one-third have had serious problems with the school system or have dropped out of school completely. Approximately one-fifth are in trouble with the justice system.

Finally, these youth, as well as other older homeless youth through the age of 21, often lack the knowledge, skills, and values required to support themselves as independent, mature adults outside the welfare system.

Over the years, many State and local agencies and programs have been established to provide needed short- and long-term services to these youth. These agencies are both public and private, profit-making and nonprofit. Some focus on a single concern, such as drug abuse or dropout prevention, while others are multi- or even all-purpose agencies, with specific components that deal with the physical health, mental health, family reunification and functioning, youth employment, education, and transitional living of these young people.

The professional staff working in these programs have been drawn from many educational and experiential backgrounds, and have gained additional competencies through their experience working with at-risk youth. Across communities, States, and Regions, many staff are currently working in various programs with superlative skills in the different areas that, taken together, would constitute a comprehensive, effective youth service program.

In addition, the Federal government, universities, local programs, and others have conducted extensive research and development efforts, including curriculum and model development, in areas of direct concern to youth service staff and to youth service programs across the country.

Notwithstanding the significant numbers of effective agencies and competent professional staff dedicated to assisting runaway and homeless youth across the country, services in some areas are inadequate or non-existent. In other cases, existing programs lack staff members with the full range of skills required to carry out the responsibilities with which the individual programs are charged. Also, many of the already-developed and tested curricula and models are little known or understood, even among the programs and staff where they would be of greatest use. Further, as new issues and problems emerge (for example, the glamorization of the youth drug culture by the news and entertainment media, and the placement of troublesome youth in private mental institutions to remove them from the streets), even experienced staff need to enhance their existing skills and to develop new ones.

To address these issues, section 314 of the Runaway and Homeless Youth Act authorizes grants to assist public and private entities in establishing and operating runaway and homeless youth centers. In addition, section 3511 of the Anti-Drug Abuse Act of 1988 authorizes grants to provide information and training to individuals providing services to runaway and homeless youth regarding issues related to the illicit use of drugs by such youth.

To effectively provide such assistance, a systematic integration and sharing of the research findings, curricula, and models that now exist in isolated components is needed. A system which provides for the transmittal of knowledge and skills from the most highly skilled youth service professionals to less experienced staff in their own and other programs also needs to be established and maintained. Finally, a system for recognizing new and emerging youth issues, and for providing intensive, skill-based training in these areas to experienced workers, needs to be developed.

Projects in this priority area are intended to stimulate the following types of activities:

(1) Determining and describing the knowledge, skills, and experience required by a youth development professional in the geographic area(s) to be served by the grantee;

(2) Analyzing, integrating, and sharing the research findings, curricula, and models of greatest use to the youth service staff and programs in the grantee area(s); and

(3) Promoting a network for the collaborative exchange of professional knowledge, skills, and experience among the youth service staff and programs in the grantee area(s).

*Minimum Requirements for Project Design:* To successfully compete under this priority area, the application should:

- Identify the exact geographic area(s) to be served, and the projected number of agencies and individuals that would receive services.
- Justify the need for the project in the geographic area(s) to be served.
- Indicate an understanding of the incidence and conditions of runaway and homeless youth in the geographic area(s) to be served, including the special problems of drug abuse and the lack of skills required for independent adult living.
- Indicate an understanding of the capacities necessary to establish and operate runaway and homeless youth agencies and of the knowledge, skills, and experience required by individual youth service professionals at both the administrative and direct service levels, and describe the mechanisms that would be used to determine the most pressing needs in the area(s) to be served.
- Indicate an understanding of relevant research and development findings and products and a knowledge of available curricula, models, and experts.
- Describe the approaches that would be employed to provide for the dissemination of appropriate information to agencies establishing and operating runaway and homeless youth centers and to promote the transmittal of knowledge and skills from highly skilled youth service providers to less experienced staff in their own and in other programs in the area(s) to be served. (The approaches should include timelines, levels of effort, and a plan for evaluating the effectiveness of the project.)
- Describe how the additional resources necessary to carry out this project would be obtained and integrated into the work of the project.
- Describe the staff, facilities, equipment, and other supports that are necessary for and would be available to the project.
- Provide assurances that one key person from the project would attend an annual 2–3 day meeting in Washington, DC.
- Describe the administrative and organizational structures of the project and the linkages that have been or would be established with other relevant projects. (Charts summarizing these structures and linkages, and written agreements defining them, should be included in the appendices.)
- Outline a plan of interaction with HDS for implementation under a Cooperative Agreement. (A Cooperative Agreement refers to Federal financial assistance in which substantial Federal involvement is anticipated. The respective responsibilities of Federal staff and the awardee are identified and agreed upon prior to the award.)

*Project Duration:* The length of the project must not exceed 36 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $125,000 per Federal Region for the first 12-month budget period or a maximum of $375,000 per Federal Region for a 3-year project period. (For example, a project covering two Regions may receive up to $250,000 for the first 12-month budget period. Conversely, a project serving less than a Federal Region (e.g., a Statewide system) would receive less than $125,000 for the first 12-month budget period.)

*Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $375,000 is $41,667 for a 3-year project period. This constitutes 10 percent of the total project budget.

*Anticipated Number of Projects to be Funded:* It is anticipated that ten projects will be funded.

1.08 Home-Based Services—An Alternative to Out-of-Home Shelter

*Eligible Applicants:* State and local, public and private runaway youth service providers.

*Purpose:* To develop, test and document models that address and prevent runaway behavior among adolescents through the provision of home-based support services.

*Background Information:* HDS supported two projects in FY 1989 to address the needs of dysfunctional families with adolescents who have received shelter and other runaway youth program services. The purpose of these projects is to develop model programs that would enable the family to remain as the primary caregiver and still protect the interests and well-being of the at-risk youth. Preliminary results from these projects, as well as concerns expressed by other runaway and homeless youth service providers, underscore the need for intensive and sustained family-based support services to meet the needs of many runaway youth and their families.

In cases when it is safe to return the runaway youth directly back home, the provision of immediate and intensive in-home counseling and casework services may be required to effectively intervene and to address the problems which caused the runaway episode. Home-based services, as an alternative to use of limited shelter spaces, can provide a number of advantages.

- For dysfunctional families, the services are brought directly to the family. Dysfunctional families often are not able to take advantage of out-of-home services. They are unable, because of the dysfunction, to arrange for transportation, to make and keep appointments or to engage in other activities that would be beneficial to them.
- Home-based services have the advantage of keeping the family together, preserving the parental role as the primary caregiver responsible for the well-being and development of the child. Home-based services make it possible for the parent to avoid experiencing a sudden or gradual loss of involvement with and control over the child to institutions such as shelters and the child welfare system.
- Immediate home-based family intervention and/or mediation approaches attempt to provide families with the skills needed to maintain positive communication and to build constructive relationships over the long-run.

Evidence also suggests that home-based services can be effective in preventing runaway behavior.

There is a need, however, to further develop, demonstrate and document innovative home-based intervention models to prevent initial runaway behavior as well as to address runaway episodes once they occur. Model projects are needed which explore methods for identifying which youth and families would benefit more from home-based services than from traditional shelter services. Similarly, information is needed on the effectiveness of providing home-based services and whether or not crisis intervention, mediation, parenting education, counseling and family support activities are useful in preventing runaway behavior and in addressing the needs of youth and families in which a runaway episode has occurred.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

- Describe the innovative model to be implemented, including the goals and objectives of the project.
- Describe how youth and families would be identified and determined appropriate to receive home-based services, with particular attention to those variables which would distinguish between youth and families who should receive home-based services and those youth who should receive out-of-home shelter or placement.
- Describe the services that are needed and would be provided to the youth and families, both directly and through referrals to other service providers in the community. Indicate how the services would reduce family conflict and the out-of-home sheltering or placement of youth.
- Describe any gaps in terms of services available in the community and how these service gaps would be addressed.
- Describe the products that would result from this effort, including curricula, handbooks, or protocols used to identify at-risk families and to plan for and to deliver services.
- Describe how the implementation of the project would be documented so as to be useful to other organizations interested in utilizing the products and methodologies developed. Such documentation should include information both on the effectiveness of the project and on the issues, problems and barriers to implementation that were encountered as well as the methods for resolving or dealing with these problems and barriers.
- Describe how the innovative methods that are developed would be integrated and continued by ongoing youth and family service agencies once Federal funding for the project has ended.
- Provide assurances that one key person from the project would attend an annual meeting in Washington, DC, if determined necessary and appropriate by the Federal project officer.
- It is anticipated that a third-party evaluation will be funded by HDS to evaluate the projects funded under this priority area. Provide assurances of cooperation with such an evaluation effort, including the maintenance of records required by the evaluator that would allow for a comparison of outcomes between youth and families served through home-based services and those served through shelter-based programs.

*Project Duration:* The length of the project must not exceed 36 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $200,000 for the first 12-month budget period or a maximum of $600,000 for a 3-year project period.

*Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $600,000 is $200,000 for a 3-year project period. This constitutes 25 percent of the total project budget.

*Anticipated Number of Projects to be Funded:* It is anticipated that up to four projects will be funded.

1.09 Transitional Living/Independent Living Collaboration

*Eligible Applicants:* State and local, public, and private nonprofit agencies with demonstrated experience in serving homeless youth and/or in providing transitional or independent living services to youth.

*Purpose:* To develop, test and evaluate models of collaboration between transitional living and independent living programs at the State and local levels.

*Background Information:* The Transitional Living Program for Homeless Youth is designed to prepare older homeless youth (ages 16–21) to lead self-sufficient lives and to prevent long-term dependency on social services. The services provided by these projects include outreach, shelter, counseling, life skills and interpersonal skills training, and appropriate referrals to social and educational services and vocational training. Such shelter and services can be provided for a period not to exceed 540 days. A major objective of the Transitional Living projects is to integrate and coordinate services for homeless youth at the local level.

The Independent Living Initiatives program, which is authorized under title IV–E of the Social Security Act, is designed to assist youth ages 16 and older, currently or formerly in foster care, to make the transition into independent living. Funds are provided to States for independent living services, including life skills building, attainment of a high school diploma or its equivalent, vocational training, career planning, location of housing, and counseling. Payment for room and board, however, is not allowable under the Independent Living Initiatives program.

Many homeless youth who are eligible to receive services under the Transitional Living Program are also eligible for services under the Independent Living Initiatives program since States may use Federal funds to provide Independent Living services to former foster children up to the age of 21. Given the potential crossover of eligible populations and the complementary services available under the respective programs, model collaborative efforts are needed for dissemination and potential replication.

Coordination of the outreach, housing and other services available under these programs could produce a cost-effective and comprehensive program model for homeless youth service providers nationwide.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

- Provide evidence of a partnership between an agency(ies) providing transitional living services to homeless youth and an agency(ies) providing independent living services to youth currently or formerly in foster care. Letters of commitment to participate in the collaboration must be provided in the application and must clearly specify the role of each agency in the proposed project.
- Clearly identify the types of services that would be integrated and the methods that would be employed to accomplish such collaboration. In particular, discuss how basic skills training, education, employment services, housing and other services would be provided.
- Identify anticipated changes in policies or practices which would be accomplished as a result of this collaboration.
- Describe how the collaboration would be continued once Federal support has ended.

• Describe the effect the project would have on independent living efforts locally or statewide.

• Provide for a third party evaluation of the impact and effectiveness of the project.

• Describe how project findings would be disseminated in a manner which would be useful to others in the field.

• Discuss the use of resources, including anticipated cost savings resulting from collaboration, and the service areas to which these savings would be directed.

• Provide assurances that at least one key person from the project would attend a 2–3 day grantees meeting in Washington, DC.

*Project Duration:* The length of the project must not exceed 24 months, with an initial budget period of 17 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $200,000 for the entire 24-month project period.

*Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $200,000 is $66,667 for a 2-year project period. This constitutes 25 percent of the total project budget.

*Anticipated Number of Projects to Be Funded:* It is anticipated that up to four projects will be funded.

*Children's Bureau*

1.10 Interdisciplinary Training Programs for Child Welfare

*Eligible Applicants:* Accredited institutions of higher education.

*Purpose:* To develop and/or strengthen the training of public child welfare workers, their supervisors and administrators through both the provision of critical information and the development of skills from a range of other disciplines which currently impact on public child welfare agencies and through the provision of specific competency based child welfare training. Trainees will be enrolled as bachelor or graduate level students at accredited institutions of higher education.

*Background Information:* Because of the increasingly complex nature of the problems affecting vulnerable children and their families, the public child welfare services delivery system is hard-pressed to provide the comprehensive social, medical, legal, psychological, educational and/or training services that are required to address the diverse needs of its service populations. The field of child welfare increasingly requires the coordination of services and the development and implementation of multi-disciplinary service approaches from a variety of academic and professional disciplines. In addition to social work, these include public administration and management; law, criminal justice and law enforcement; public health, medicine, pediatrics and nursing; psychology, sociology, child development and mental health; and education.

While the need for specialized training for child welfare workers in the public sector has been recognized, few universities have developed programs with a sufficient emphasis in the related disciplines or with the professional training expertise required to improve services to vulnerable children and their families. Social work education has tended to emphasize coursework for those students who wish to enter the mental health field or private practice. In contrast, this priority area will specifically focus on providing child welfare training for bachelor or graduate students who intend to become public child welfare workers or who wish to qualify themselves for advancement in public child welfare agencies.

Federal matching funds for university-based training of public child welfare personnel have been available for some time under sections 474(a)(3) (A) and (B) of the Social Security Act; 45 CFR 1356.60 (b) and (c); and 45 CFR 235.63–235.66(a). States with plans approved under title IV–E are entitled to Federal matching funds at the level of 75 percent reimbursement for the training of personnel employed or preparing for employment by the State agency or by the local agency administering the State plan. This includes both short- and long-term training at educational institutions, through State grants to the institutions or by direct financial assistance to students enrolled in such institutions. However, the use of such training opportunities has been limited by the day-to-day demands placed on the State child welfare systems, and also because universities and State child welfare agencies have not collaborated sufficiently with one another to develop training curricula which is practical and competency based and which provides the skills needed to work at all levels of the public child welfare system.

Competency based child welfare training is training to learn or obtain the specific knowledge and skills necessary to provide child welfare services in a public social services agency. The focus of competency based training is on the practical realities which public child welfare workers confront in their day-to-day work, rather than on theoretical social work education models.

Funding from this priority area is expected to be used to develop competency based child welfare curricula, to deliver training and to evaluate the results of the training. It is expected that title IV–E funds will be the primary source of funding for traineeships. However, funds from this grant can be used to provide traineeships in unusual situations to a limited number of students for whom title IV–E training funds have not been made available. Those who receive traineeships pursuant to this announcement will be expected to accept employment in public child welfare.

*Minimum Requirements For Project Design:* In order to compete successfully under this priority area, the application should:

• Describe the relationship between the university and the public child welfare agency and how this relationship will be strengthened throughout the project, including the establishment of an ongoing project advisory committee composed of both university and public agency personnel.

• Identify and describe the proposed administrative and organizational aspects of the interdisciplinary training program, the specific academic departments, institutions and/or community agencies that would be involved, and the formal agreements and commitments that would be required from each participant regarding level of participation and support for the establishment of a child welfare, interdisciplinary training program.

• Describe the preliminary planning and coordination activities to be completed before implementation of the program and provide specific timelines for their completion. Grantees may take up to one year to plan and develop curricula; but in all cases, training will begin no later than twelve months following award notification.

• Describe the commitment of the public agency to support participation in the program, to hire students trained under the program, and to provide field placements for trainees.

• Describe the proposed curriculum which will include, at a minimum, child welfare courses, which are competency based and non-theoretical, in social work and related disciplines such as law, psychology, sociology, health, education, child development, etc. The selection of courses will be made after consultation with the public child welfare agency and/or project advisory committee.

• Describe who the students will be (bachelor and/or graduate level); how

many are expected to be trained over the life of the project; the criteria for selection of students; how the students will be recruited; and specific strategies which will be used to recruit minority students.

• Include a plan for evaluation which, at a minimum, includes a follow-up of students to determine their subsequent employment in public child welfare agencies and the relevancy of the various aspects of the program to meet the needs of the job assignments.

• Describe any plans for offering traineeships with these funds and the criteria to be used in awarding traineeships.

• Include in the project budget funds for at least one key project person from the university and one key person from the public child welfare agency to jointly attend a one to two day orientation meeting in Washington, DC shortly after the award of the grant and a subsequent two to three day grantee meeting in Washington, DC.

*Project Duration:* The length of the project must not exceed 60 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $150,000 for the first 12 month budget period or a maximum of $750,000 for a five year project period. In addition, because the proposed projects are training grants, indirect cost rates for these grants shall not exceed 8 percent.

*Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $750,000 is $250,000 for a 5-year project period. This constitutes 25 percent of the total budget. Funds from this grant cannot be used to match title IV–E training funds.

*Anticipated Number of Projects:* It is anticipated that four or five projects will be funded.

1.11 Day Treatment Services

*Eligible Applicants:* Public or private child welfare agencies.

*Purpose:* To develop model programs for the provision of day treatment for children who would otherwise be removed from their homes and placed in residential care; or to facilitate the reunification of children who can be returned from residential care earlier with the support of day treatment services.

*Background Information:* The number of children entering foster care is increasing rapidly and the problems of foster children are dramatically more complex than in the past. Many of these children need highly specialized services that are generally found in residential care treatment programs. These programs provide services for children who are emotionally disturbed, developmentally disabled or delinquent. However, many such children would not need to leave their homes if these services were available in the community. Day treatment programs may be an effective means of providing these services. Such programs are appropriate when the child's home is sufficiently intact and safe for the child to spend limited hours and nights and the child can be transported daily.

Children enter these programs without the shock or stigma of removal from their homes. Frequent staff contacts allow parents to be actively involved and costs are significantly lower than for residential care. Day treatment agencies provide the advantages of residential care, social services and child care. Other program components, such as regular and special education, vocational and mental health services and some aspects of recreation, may be obtained from existing services in the community. Comprehensive models of day treatment programs that address these needs and issues are solicited.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

• Describe the model and program that would be developed, including the number, age and types of children to be served, the staffing pattern, the number of hours of operation per day, and the plan for involving the child's family.

• Describe the child-specific recruitment and admission procedures and assessment tools that would be utilized for the child and family.

• Indicate the type of training that would be provided for staff.

• Indicate which aspects of the program would be provided by agency staff and which would be obtained from other organizations, describe how those services would be coordinated, and furnish letters of commitment from the other organizations to be involved.

• Describe the arrangements that would be made to contract with a third party to conduct an independent evaluation of the project, and describe in detail the design, including a control group, that would be implemented. The design must include indicators related to family stability, developmental outcomes for the children, family outcomes, and the cost-effectiveness of the program. The evaluation must begin no later than the 18th month of the project and follow-up must continue at least six months beyond delivery of services funded through the project.

• Describe how information about the findings of the project would be packaged and disseminated to the field.

• Provide assurances that at least one key person from the project would attend a 2–3 day annual grantee meeting in Washington, DC.

*Project Duration:* The length of the project must not exceed 60 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $200,000 for the first 12-month budget period or a maximum of $1,000,000 for a 5-year project period.

*Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $1,000,000 is $333,333 for a 5-year project. This constitutes 25 percent of the total project budget.

*Anticipated Number of Projects to be Funded:* It is anticipated that three projects will be funded.

1.12 Cooperative Agreement to Provide an Active Focus on Permanency Planning

*Eligible Applicants:* All currently funded National Child Welfare Resource Centers.

*Purpose:* To compile and focus available resource materials to better address barriers in the child welfare, legal and judicial systems which inhibit and delay the processes by which children are reunited with their families or placed in adoptive homes or other permanent placements.

*Background Information:* A July 1990 report on "Termination of Parental Rights: Barriers to Permanent Placement" by the Department of Health and Human Services'Office of Inspector General concludes that, in spite of the implementation of child welfare reforms as mandated by Public Law 96–272, children are still spending long periods of time in out-of-home care. The report notes that, where special studies have been conducted, children with adoption plans generally remain in foster care between 2.5 and 3.5 years.

It appears that while most States have legislation in place to guide the termination of parental rights process, a number of administrative barriers continue to exist. States do not meet the "reasonable efforts to reunite families" requirements in a timely manner, the consideration of long-term placement options for children is delayed, and there is limited management commitment and a lack of staff and services. There are also many barriers and delays in the legal and judicial systems. Case documentation is frequently inadequate, legal resources for child welfare cases are limited, and problems and delays are encountered in scheduling court hearings.

Over the past 15 years, the Children's Bureau has worked to address these issues in a variety of ways. Most, if not all, of the National Child Welfare Resource Centers have developed and cataloged materials related to technical assistance, training, case management, case review, case planning, reunification services, termination of parental rights, adoptive placement and other related issues. However, it is not known whether or not these efforts have resulted in any significant decrease in the amount of time children spend in out-of-home care.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

- Provide an overview of existing resource materials, both those compiled by the Resource Center and those that are available from other sources, focusing on permanency planning issues, including an indication of the gaps in these materials as well as the extent to which older materials would need to be updated.
- Describe how, either individually or in concert with other Resource Centers, materials related to permanency planning issues would be compiled, refocused to address existing barriers which inhibit or delay permanent placement of children, and would fill identified gaps in the available literature.
- Describe how these materials would be disseminated, including how maximum use would be made of the Resource Center's existing dissemination mechanisms as well as the new strategies for dissemination that would be employed.
- Provide assurances that at least one key person would attend the annual 2–3 day grantee meeting in Washington, DC.
- Outline a plan of interaction with HDS for implementation under a cooperative agreement, including as appropriate, activities involving Headquarters and Regional Office staff. (A cooperative agreement is Federal Financial Assistance in which substantial Federal involvement is anticipated. The respective responsibilities of Federal staff and the awardee are negotiated prior to the award.)

*Project Duration:* The length of the project must not exceed 24 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $75,000 for the first 12-month budget period or a maximum of $150,000 for a 2-year project period.

*Matching Requirement:* There is no matching requirement.

*Anticipated Number of Projects to be Funded:* It is anticipated that two projects will be funded.

1.13 Improvement of Indian Child Welfare Programs Through the Development of Agreements Between Tribes and States

*Eligible Applicants:* Tribal social services agencies in cooperation with a State agency(ies), or a State social services agency in cooperation with one or more Tribal social services agencies within its borders, or an Intertribal Council in cooperation with the appropriate State social services agency(ies).

*Purpose:* To improve working relationships between States and Tribal child welfare services, to provide assistance in improving the stability and quality of Tribal child welfare services, and to encourage increased regular funding for services to protect and support Indian children.

*Background Information:* In 1986, the most recent year for which data are available, there were over 9,000 Indian children in out-of-home placements, an increase of 25 percent over the number in care in 1980. This constitutes 3.1 percent of the total number of children in placement but, since Indian children constitute only 0.9 percent of the total children in the United States, they are being placed at a rate that is 3.6 times greater than the rate for non-Indian children. Since 1986, there has been a general increase in the number of children placed, particularly as a result of parental substance abuse, and it is assumed there have been similar increases among Indian children. Many of the children are also quite young, with an average age of just under 10 years.

A survey funded by ACYF in 1988 reported that State child welfare and child protection agencies provide a reasonable standard of services to Indian children and that there is reasonable adherence to the Indian Child Welfare Act (the Act). Factors which promote implementation of the Act, according to results of the survey, include:

- The passage of a State Indian child welfare law that makes the Federal law more explicit and reinforces compliance by State courts and public agencies.
- The hiring of Indian staff members in State and local public agencies to help make informed policy decisions and strengthen casework practices related to Indian families.
- State-Tribal agreements that provide support for substitute care placements and for child welfare services.
- Education of judges about the Act.
- Cooperative relationships between public agencies and Indian Tribes and organizations.
- The provision of training and technical assistance in the development of tribal child welfare services.

Factors that deter or undermine implementation of the Act, according to survey results, include:

- The unfamiliarity with or resistance to implementation of the Act in some State social service agencies.
- The lack of experience in working with Tribes found in many State social service agencies.
- The turnover of public agency staff.
- Concerns about Tribal accountability for providing services and caring for children.
- Insufficient funding for Tribal child welfare services and proceedings.
- Absence of Tribal courts with the authority to assume jurisdiction over proceedings involving Tribal members.

Other studies have reported similar findings. Since substantial funding for State child welfare services is awarded through titles IV–B and IV–E of the Social Security Act, and the States are responsible for providing child welfare services to all children within the State, one approach to increasing the stability and reliability of Tribal social services may be the encouragement of better working relationships between States and Tribes.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

- Propose a plan for a State-Tribal agreement that would improve direct services to Indian children and their families designed to facilitate the implementation of programs such as family preservation services, foster parent recruitment and training, and reunification services with an emphasis on substance abuse treatment.
- Specify the activities that would be carried out by the State or county and by the Tribe, respectively.
- Specify how resources would be allocated for the development of the State-Tribal agreement and for the improvement of existing Tribal social services. Such efforts might include the joint training of State and Tribal workers and the conduct of efforts to establish a Tribal child placement agency, the development of licensed foster family homes, and the coordination of other needed services such as substance abuse treatment and transportation.

• Provide assurances that the project would be implemented cooperatively by the Tribe and the State agency.

• Describe how the Tribal social services agency would regularly provide child welfare services under contract with the State.

• Provide assurance that at least one key person would attend an annual 2–3 day meeting of grantees funded under this priority area in Washington, DC.

*Project Duration:* The length of the project must not exceed 24 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $100,000 for the first 12-month budget period or a maximum of $200,000 for a 2-year project period.

*Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $200,000 is $66,667 for a 2-year project period. This constitutes 25 percent of the total project budget.

*Anticipated Number of Projects to be Funded:* It is anticipated that two projects will be funded.

1.14 Reducing Staff Turnover Through Agency Redesign and Improved Personnel Practices

*Eligible Applicants:* State or county level public child welfare agencies or private nonprofit child welfare agencies in coordination with a public agency.

*Purpose:* To demonstrate ways to reduce staff turnover, improve employee morale, and improve child welfare service delivery, including child protection.

*Background Information:* Social service and child welfare agencies often have staffing problems, employing many new workers with minimum training and experiencing a very high turnover of staff. Work in these agencies is perceived as highly stressful and very structured, with staff at all levels reporting feelings of frustration. *A 1987 National Study of Public Child Welfare Job Requirements* by Marilyn Russell published by the National Resource Center for Child Welfare Program Management and Administration found that low job turnover was correlated with a positive organizational climate and increased opportunities for staff such as educational leave, conference attendance, redesigned workspace, job rotation and similar activities. In order to make child welfare agencies better places to work, and to implement service reforms, it is essential that agencies find ways to improve the quality of worklife for their employees. It is also desirable for child welfare agencies to take advantage of the use of new technologies, particularly in relation to record keeping and case management.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

• Provide a critical review of the literature on "quality of workplace" research, and propose questions that would be addressed in the assessment of the demonstration agency's structure and functional relationships.

• Describe specific plans for agency assessment involving administrators, supervisors and workers, proposed innovations and redesign of the workplace, implementation plans and/or evaluation of the effort. Detailed work plans and proposed timeframes for their completion should also be provided.

• Provide assurance that the public agency would be fully involved in all phases of the project.

• Agree that at least one key person would attend a 2–3 day annual meeting in Washington, DC.

*Project Duration:* The length of the project must not exceed 24 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $75,000 for the first 12-month budget period or a maximum of $150,000 for a 2-year project period.

*Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $150,000 is $50,000. This constitutes 25 percent of the total project budget.

*Anticipated Number of Projects to be Funded:* It is anticipated that two projects will be funded.

1.15 Specialized Family Foster Care for Drug and Alcohol Affected Infants

*Eligible Applicants:* Public or private nonprofit child placing agencies.

*Purpose:* To develop model programs to provide specialized family foster homes for drug and alcohol affected infants who need a specialized level of care that their families are unable to provide.

*Background Information:* Increasing numbers of alcohol and drug affected children are entering foster care because of their special needs and their families, inability to provide the care they need. Many of these infants are entering group care programs to avoid remaining in costly hospital care, and because regular foster families are unable to meet their intense, highly specialized needs. However, long-term group care is less than adequate to meet the needs of young children who need the full-time care of a primary caregiver. In addition, there is a shortage of programs which provide assessment and direct services to the parents of the children.

Specialized family foster care has been shown to provide adequate care to infants with serious medical and emotional needs while also providing a warm family atmosphere, a supportive relationship, and access to the child's family. While the cost of specialized family foster care is greater than regular family foster care, it is far less costly than hospital or residential group care. Four projects funded in 1988 showed success with a wide variety of children, from medically fragile infants to older emotionally disturbed youth. Each project resulted in reductions both in institutionalization and costs.

*Minimum Requirements for Project Decision:* In order to successfully compete under this priority area, the application should:

• Propose a program which would include the utilization of current foster families or the recruitment of new families; pre-service and in-service training for foster parents and staff; support services; cooperative arrangements with hospitals that typically care for the type of infants to be served; respite care; and the utilization of a range of community-related resources.

• Provide documentation for the need for the service model proposed.

• Address issues such as the appropriateness of family foster care, the rehabilitation of parents and reunification of families, adoption and other permanency planning services, support groups, respite care and therapeutic or medical intervention.

• Describe the cooperation needed from other organizations, and provide letters of commitment from these organizations.

• Describe aspects of the project that are specific to specialized family foster care including proposed staff education, caseload size, staff and foster parent interactions with birth parents, and licensing.

• Describe the arrangements that would be made to contract with a third party to conduct an independent evaluation of the project, and describe in detail the design, including a control group, that would be implemented. The evaluation must address permanency and stability outcomes for children and for the family, employment, and decreased drug use (where relevant).

• Describe how information about and the findings from the project would be disseminated to the field.

• Provide assurances that at least one key person would attend the 2–3 day

annual grantee meeting in Washington, DC.

*Project Duration:* The length of the project must not exceed 36 months.

*Federal Share of the Project Costs:* The maximum Federal share is not to exceed $125,000 for the first 12-month budget period or a maximum of $375,000 for a 3-year project period.

*Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $375,000 is $125,000 for a 3-year project period. This constitutes 25 percent of the total project budget.

*Anticipated Number of Projects to be Funded:* It is anticipated that three projects will be funded.

1.16 Respite Care Services for Families Who Adopt Children With Special Needs

*Eligible Applicants:* States, local government entities, public or private nonprofit licensed child welfare or adoption agencies, licensed child care or respite care providers, incorporated adoptive parent groups with experience in working with adoptive populations, and University Affiliated Programs with respite care components or with the capability of developing respite care programs.

*Purpose:* To develop or replicate a variety of affordable respite care models for the adoptive parents of children with special needs, especially for parents of medically fragile or severely physically or emotionally disabled children.

*Background Information:* HDS recognizes the importance of post-placement support services for adoptive families who often encounter a multitude of special issues and problems, some arising immediately upon placement and others manifested in later phases of the child's development. It has become increasingly clear that the adoption process does not end with the placement of the child, and that continuing support may be required to assist the adoptive family. Despite the increasing availability of post-placement/post-legal services for adoptive families, problems persist. There are few specialized respite care programs for adoptive families that provide a period of temporary relief or rest from parental responsibilities. Such programs can be especially helpful to families who adopt children with special needs by providing support during emergencies or respite from the daily demands of a special needs child. Generally, such respite care is provided by specially trained caregivers or companions; however, with proper preparation, it can also be provided by friends, relatives, skilled care providers, and professionals either in the family's home or in another location.

During FY 1990, the University of Kansas, Bureau of Child Research, was awarded a grant under a similar priority area to expand an existing respite care program. University and community college students are being used to recruit and train 45 respite care providers. In addition to in-home services, out-of-home settings will be offered to meet the needs of 45 families by extending training to personnel in programs such as day care centers, summer camps and home health care agencies.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

- Describe plans to develop or replicate respite care models for the adoptive parents of special needs children that include, but are not limited to:
  - —Facility-based models such as those located in churches, day care centers, community-based group homes, and rehabilitation centers, and "mother's day out" programs, weekend respite, evening respite, and overnight respite programs;
  - —In-home respite care services offered in the family's home; and,
  - —Respite host family services offered in the provider's home.
- Describe the respite care that would be provided by the project for parents of children who are medically fragile or who have severe physical or emotional problems.
- Describe the preparation, referral, follow-up, and counselling services that would be provided to respite service users.
- Describe the collaboration that would be established with groups such as community recreational services, churches, day care centers, group homes, residential treatment centers, adoptive parent groups, and University Affiliated Programs in the provision of the respite services.
- Describe the training that would be provided to service providers and how specific models of respite care would be developed or replicated.
- Estimate the number of special needs children and families who would be served and document that a sufficient volume of special needs adoptive families exists to support a program of the size proposed.
- Provide for a third party, independent evaluation of the project and include a discussion of the proposed evaluation design.
- Provide assurances that at least one key person from the project would attend the annual three day Adoption Opportunities grantees meeting in Washington, DC.

*Project Duration:* The length of the project must not exceed 24 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $125,000 for the first 12-month budget period or a maximum of $250,000 for a 2-year project period.

*Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $250,000 is $83,333 for a 2-year project period. This constitutes 25 percent of the total project budget.

*Anticipated Number of Projects to be Funded:* It is anticipated that four projects will be funded.

1.17 Increase Adoptive Placements of Minority Children

*Eligible Applicants:* States, local government entities, public or private nonprofit licensed child welfare or adoption agencies, and incorporated adoptive family groups and community-based organizations with experience in working with minority populations. Organizations funded by HDS in FY 1990 under a similar priority area are not eligible to apply for a second grant under this priority area.

*Purpose:* To develop programs designed to increase the adoptive placement of minority children in foster care who have the goal of adoption, with a special emphasis on the recruitment of minority families.

*Background Information:* The Adoption Opportunities legislation, as amended by Public Law 100–294, places an emphasis upon the recruitment of minority families and authorizes funds for demonstration projects for the recruitment of families to adopt waiting minority children. It is estimated that half of the approximately 30,000 children currently free for adoption and awaiting placement are minority children. Some of these children are older, have disabilities and may wait long periods of time before placement with adoptive families.

A Child Welfare League of America study entitled "The State of Adoption in America" reports four major issues cited by public agencies as critical impediments to timely adoptive placement: lack of minority parents for waiting minority children; lack of agency staff and funds; lack of parents willing to take children with special needs; and delays in the termination of parental rights. HDS is aware that there must be a continuous focus on the

adoption of minority children and has funded a number of programs designed to specifically recruit minority families and to place minority children. Unfortunately, however, only a few of these programs continue beyond Federal funding.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

- Identify and describe existing barriers to minority adoption in the locale where the project is to be implemented; the number of families that would be recruited; and the number of children who would be placed.
- Describe the innovative methods that would be employed to recruit and prepare minority families (including single applicants) in a timely manner in order to retain recruited families.
- Provide assurances that the program would not involve payment of fees by families for the adoption process.
- Describe how cultural sensitivity training would be provided to all relevant staff to increase their effectiveness in serving minority children and families.
- Provide for an evaluation component which would assess the project's effectiveness in achieving the desired objectives and would test its ability to provide services to prospective adoptive families through the completion of the adoption.
- Document how the program would be continued beyond Federal funding as part of the agency's ongoing program and describe the specific steps which would be taken to accomplish this.
- Provide evidence of licensure.
- Provide assurances that at least one key person from the project would attend the annual three day Adoption Opportunities grantees meeting in Washington, DC.
- Provide assurances and document that the project would be staffed and implemented within 90 days of the notification of the grant award.

*Project Duration:* The length of the project must not exceed 17 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $100,000 for the 17-month project period.

*Matching Requirements:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $100,000 is $33,333 for the 17-month project period. This constitutes 25 percent of the total project budget.

*Anticipated Number of Projects to be Funded:* It is anticipated that 15 projects will be funded.

1.18 Adoptive Placement of Foster Care Children

*Eligible Applicants:* Eligibility is limited to State social service agencies.

*Purpose:* To assist States in their efforts to increase the adoption of foster children legally free for adoption, according to State goals and pre-established plans for improving adoptive placements.

*Background Information:* Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, as amended, authorizes the funding of grants to States to improve adoption services for the placement of special needs children legally free for adoption. Children in foster care who are free for adoption, particularly children with special needs, do not always move smoothly through the child welfare system into placement with a permanent family.

States have received grants to make systemic changes in their adoption programs; to provide computer hardware, software and fees for membership in the National Adoption Network; and to develop a consortium of nine States with large numbers of children in care in order to share knowledge to improve and enhance their special needs adoption programs and to increase the placement of children residing in those States. More than half of the States have received grants to improve adoption services; however, only a small number have been able to sustain these efforts.

Increasingly, children entering foster care have more complex problems which require more intensive services. Permanent families must be continuously recruited and prepared to parent the growing population of children who cannot return to their birth families. Supportive services must be added or improved upon so that the children in foster care who are legally free for adoption can move into adoptive placement in a timely manner. This will require collaborative efforts with the court system to terminate parental rights. Further, agencies must commit resources for the ongoing support of adoptive families not only at placement, but also after legalization of the adoption. Past projects have demonstrated that greater improvements in placing these children are made when permanent plans are developed and carried out very early in the placement; if there are sufficiently trained and experienced staff; and when there are available resources and administrative commitment to adoption and to coordinated community-based efforts.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

- Identify and verify the number of foster care children in the area to be served who are legally free and waiting for adoptive placement.
- Provide and verify the rate of placement of foster care children placed in adoption in the year preceding the application (the rate of placement is the number of children placed divided by the number of children waiting for adoption).
- Describe the methods that would be employed to increase the rate of placement of foster care children into adoption and the goals for improvement that would be achieved during the period of the grant.
- Describe how the proposed improvements, if successful, would be continued in the absence of Federal funds.
- Describe an evaluation component which focuses on the innovations that would be used to improve the placement of children who are legally free for adoption and which addresses the successes and failures of the initiative. The evaluation should include the collection and analysis of data to determine placement rates and the types of clients served (e.g., waiting children, prospective adoptive families). Statistics should be collected to determine the availability of adoptive families during the program period. The evaluation should also include descriptive information on the processes and procedures for implementing the program. This information should be used to assess placement rates and the success or failure of the innovative program methodologies used.
- Provide assurances that at least one key person from the project would attend the annual three day Adoption Opportunities grantees meeting in Washington, DC.

*Project Duration:* The length of the project must not exceed 12 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $100,000 for the 12-month project period.

*Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $100,000 is $33,333 for the 12-month project period. This constitutes 25 percent of the total project budget.

*Anticipated Number of Projects to be Funded:* It is anticipated that two projects will be funded.

1.19 Post-Legal Adoption Services

*Eligible Applicants:* States, local government entities, public or private nonprofit licensed child welfare or adoption agencies, and incorporated adoptive parent groups. Organizations funded by HDS in FY 1990 under a similar priority area are not eligible to apply for a second grant under this priority area.

*Purpose:* To develop or replicate projects which will strengthen the provision of post-legal adoption services for families who have adopted children with special needs. The services provided shall supplement, not supplant, services supported by any other funds available for the same general services.

*Background Information:* The Adoption Opportunities legislation, as amended by Public Law 100–294, authorizes funds for increased post-legal adoption services. Recognition of special issues in adoption in the past decade has led adoption professionals to reconsider the concept that agency services to adoptive families end with the legal consummation of the adoption. Historically, once the adoption was legally consummated, the newly-formed family was to be considered the same as any other family. There is now acknowledgement that adoption is a life-long process and that service providers need to understand the unique interpersonal dynamics of adoption in order to provide effective post-legal adoption services (those provided after the legalization of the adoption) to families who seek assistance.

During the past three years, HDS has funded 23 projects to provide post-legal adoption services for families who have adopted children with special needs. These projects are located in Alaska, the District of Columbia, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Michigan, Minnesota, Montana, New York, Ohio, Oregon, Pennsylvania, Puerto Rico, South Carolina, Tennessee, Utah, and Washington. Information on these projects can be obtained from the National Adoption Information Clearinghouse.

Funds under this priority area for fiscal year 1991 will support both the institutionalization and expansion of post-legal adoption services in communities where such services already exist, and the development of such services in communities where they do not yet exist. Support will also be provided for the development of additional models of service delivery.

Services funded under this priority area shall be for families who have adopted children with special needs. Other variants of post-legal adoption services, while perhaps important, are not the purpose or focus of this priority area.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

- Propose to provide services such as individual, group and/or family counseling; case management; training of staff of public agencies and of private, nonprofit child welfare and adoption agencies licensed by the State to provide adoption services, and support personnel including mental health professionals; and assistance to adoptive parent organizations and support groups for adoptive parents, adopted children and siblings of adopted children.
- Describe the models that would be developed or replicated and the services that would be provided.
- Describe the existing post-legal adoption services, if any; the need for expanded or new services; and plans for the development, implementation, and institutionalization of enhanced and new services.
- Describe how the proposed project builds upon the existing literature and knowledge base related to post-legal adoption services.
- Provide specific written commitments from collaborating or cooperating agencies, if any.
- Document and describe how the project would be an ongoing part of the agency or organization's program following the termination of Federal funding and the steps the applicant would take to accomplish this.
- Provide assurances that the project would be staffed and implemented within 90 days of the notification of the grant award.
- Provide assurances that at least one key person from the project would attend the annual three day Adoption Opportunities grantees meeting in Washington, DC.

*Project Duration:* The length of the project must not exceed 24 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $100,000 for the first 12-month budget period or a maximum of $200,000 for a 2-year project period.

*Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $200,000 is $66,667 for a 2-year project period. This constitutes 25 percent of the total project budget.

*Anticipated Number of Projects to be Funded:* It is anticipated that 15 projects will be funded.

1.20 Permanency Planning—Efforts to Free Children for Adoption

*Eligible Applicants:* Public child welfare agencies.

*Purpose:* To reduce the time that children remain in foster care.

*Background Information:* The Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96–272) emphasizes the provision of reunification services as quickly as possible when children are removed from their homes. Should the family situation not improve within a reasonable period of time and the child cannot be returned to his own family, permanent plans must be made in the best interest of the child.

Child welfare workers and adoption experts report numerous legal and judicial problems which impede the process of terminating parental rights so that children can move out of foster care into permanent adoptive placements. Among the critical issues identified are:

- Professionals are inexperienced in the court process;
- Workers are not certain when "reasonable efforts" have been made and when to pursue termination early in a case;
- The reluctance of judges to terminate parental rights unless an adoptive family is available;
- State legislation which impedes the termination process; and,
- The lack of timely processing of cases on court calendars.

To address these problems, some experts suggest the need for early assessments and more "foster/adopt" placements of children with their prospective adoptive parents; timely interventions to support the child's need for permanency; and increased funding for staff positions such as attorneys and caseworkers to enhance service delivery.

The focus of this priority area is to enable child welfare workers to identify children who are candidates for adoption early in each case and, through a collaborative effort with the courts, move these children through the process so that they can become legally free for adoption.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

- Describe the number and types of families and children that would be served.
- Describe the early intervention and prevention strategies (resources/training) that would be used with the family and the legal and judicial

systems to reduce the length of time the child remains in foster care.

• Provide for the establishment of a unit of experienced workers to focus on permanency, following cases from intake to adoption to provide continuity and prevent other problems which could be barriers to the adoption. The application should provide a discussion of how this unit, by virtue of its members' backgrounds, knowledge, and/or experience, would address the racial and ethnic diversity of its client population.

• Provide a detailed description of the methodologies and procedures that would be used in conducting the project, including a description of the evaluation plan which would be implemented to measure the degree to which the project's objectives have been accomplished.

• Provide assurances and document that the project would be staffed and implemented within 90 days of the notification of the grant award.

• Provide letters of commitment from legal/judicial systems that would be directly involved in the project.

• Provide assurance that at least one key person from the project would attend the annual three day Adoption Opportunities grantees meeting in Washington, DC.

*Project Duration:* The length of the project must not exceed 24 months.

*Federal Share of Project Costs*: The maximum Federal share is not to exceed $150,000 for the first 12-month budget period or a maximum of $300,000 for a 2-year project period.

*Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $300,000 is $100,000 for a 2-year project period. This constitutes 25 percent of the total project budget.

*Anticipated Number of Projects to be Funded:* It is anticipated that six projects will be funded.

1.22 Assistance to States to Improve Adoption Data

*Eligible Applicants:* Units of State government which have access to information on adoption. Generally, these include departments of social services, offices of vital statistics and offices of court administrators. No county or city agency may apply. Only one grant will be awarded per State.

*Purpose:* The purpose of this priority area is to provide funds to meet the one-time or short-term expenses associated with State activities designed to improve the collection and reporting of data on *all* adoptions within the State, not simply on the adoption of children under the care and responsibility of the State department of social services.

*Background Information:* HDS has been encouraging the States to develop coordinated efforts to improve the collection and reporting of data on all types of adoptions for a number of years. Many States have also expressed interest in participating in the *voluntary* adoption data collection system described in the "Notice of Proposed Rulemaking on Data Collection for Foster Care and Adoption" that was published in the **Federal Register** on September 27, 1990.

The National Center for State Courts (NCSC), through a grant from HDS, has offered technical assistance to various State governmental units and is currently providing both telephone and on-site technical assistance to help States improve their adoption data collection and reporting systems. Examples of the types of technical assistance being provided by the NCSC are: facilitating coordination among the various agencies within each State; identifying the problems with matching adoption data elements from different sources within States; assessing the capability of existing hardware and software; and providing information to legislative bodies or courts to change laws, regulations or court rules to permit the exchange of adoption data among agencies.

However, in addition to this assistance, States which want to improve their data collection and reporting on all adoptions and to participate in the voluntary portion of the adoption and foster care reporting system may have other needs which cannot be met by NCSC or through current State budgets. These would include the purchase of computer hardware and software, the development of software, the hiring of short-term employees or the engaging of consultants to help in the resolution of highly technical computer issues.

Grants awarded under this priority area should be used for these and related purposes. Potential applicants are encouraged to seek consultation on their needs for assistance from Victor E. Flango, Ph.D., Project Director, National Center for State Courts, 300 Newport Avenue, Williamsburg, Virginia 23187–8798, telephone (804) 220–0449.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

• Describe how the unit of State government applying for assistance would coordinate its efforts with other relevant units of the State government.

• Describe how the funds would be used to facilitate the collection and reporting of data on all adoptions within the State. The application should specifically describe the hardware or software which would be purchased, the type of consultation which would be obtained, or the other specific uses which would be made of the funds and provide justification of the need for and appropriateness of such assistance.

• Discuss why State funds are not being used for these purposes.

• Describe the difference the receipt of this assistance would make in terms of the speed in which data on all adoptions would be collected and reported.

*Project Duration:* The length of the project must not exceed 6 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $10,000 for a 6-month project period.

*Matching Requirement:* There is no matching requirement.

*Anticipated Number of Projects to be Funded:* It is anticipated that 10 projects will be funded.

1.23 Adoption Training and Minority Sensitivity

*Eligible Applicants:* Accredited schools of social work, national resource centers and national child welfare training programs.

*Purpose:* To develop a model curriculum for the in-service training of adoption workers, supervisors and administrators in "minority-sensitive" issues. Applicants must conduct all of the steps necessary for the provision of this training such as curriculum development and the identification of trainers and the recruitment of trainees.

*Background Information:* Minority children continue to be overrepresented in the child welfare system's out-of-home care services, including children awaiting adoption. However, there have been relatively few training programs that specifically address the issue of sensitivity to minority groups. Adoption staff often do not reflect the racial and ethnic makeup of their client population so it is especially important that they receive training to facilitate an understanding and appreciation of the values of and the differences in minority clients. In addition, schools of social work have not specifically addressed this issue in their BSW and MSW programs nor in the in-service training they provide to the adoption community. Similarly, most adoption agencies have not included such training in their staff orientation or staff development programs.

The successful recruitment of prospective adoptive families, both minority and non-minority, for minority children, the preparation and utilization of recruited families, and the provision of effective post-adoption/post-legal services for these families depend upon the knowledge, sensitivity and appreciation of minority issues at all levels of the adoption agency. Therefore, the development, utilization and institutionalization of a "minority-sensitive" curriculum for adoption agency personnel, including administrative, supervisory and staff directly providing services, is important.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

- Provide for the establishment of an advisory board that includes individuals from public and private adoption agencies, adoptive parents and community organizations representing the following minority groups; African American, Hispanic, Asian and Native American.
- Describe the methodology that would be employed in developing the curriculum, in the provision of training, in training the trainers, in establishing the advisory board and in field testing the curriculum in areas representative of the minority populations to be served.
- Describe a proposed plan for the dissemination of the curriculum which includes schools of social work and public and private social service agencies.
- Provide for a contract with a third party to conduct an evaluation of the project. The proposed evaluation plan must be described including, at a minimum, plans for curriculum pre- and post-tests and for a six month follow-up of individuals receiving the training.
- Provide assurances that at least one person from the project would attend the annual three day Adoption Opportunities grantees meeting in Washington, DC.

*Project Duration:* The length of the project must not exceed 36 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $250,000 for the first 12-month budget period or a maximum of $750,000 for a 3-year project period.

*Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $750,000 is $250,000 for a 3-year project period. This constitutes 25 percent of the total project budget.

*Anticipated Number of Projects to be Funded:* It is anticipated that one project will be funded.

1.24 Post-Legal Adoption Consortia

*Eligible Applicants:* Public social services agencies and public mental health programs or private nonprofit social services agencies which have collaborative relationships with a public social services agency. Only agencies in States that have placed over 200 children per year during the past three years are eligible. Only one agency per State will be awarded a grant.

*Purpose:* To assist States to develop and institutionalize post-legal adoption services which will result in sustained adoptive placements of children with special needs.

*Background Information:* Adoption is a life-long process and families need to be empowered in seeking post-legal adoption services. These services must be viewed by public child welfare agencies as core adoption services which are accessible to families, as needed. Since 1984, the Adoption Opportunities Program has provided funding to agencies and organizations to develop post-legal adoption resources and to train mental health professionals to provide relevant services to adoptive families and their children. Although some successful post-adoption and post-legal models have been developed, many States do not have the fiscal resources necessary to implement the models that have been developed or other post-legal adoption services. Therefore, few resources are available to address many of the issues which develop following placement and legal consummation of an adoption. Continuous programs must be in place to help families deal with adoption issues and with the special needs of their children. Further, implementation of post-legal adoption services should include staff training in the dynamics of the unique and sometimes complicated circumstances presented by adoptive families.

Agencies receiving grants must participate in a consortium which will meet semi-annually in Washington, DC to share information, define basic post-legal adoption services, review successful post-legal adoption practices, projects and laws and disseminate their findings. The meetings will be convened and facilitated by an agency selected under this announcement to serve as consortium leader. That agency will receive an additional award of $30,000 per year to convene meetings, locate meeting sites, confer with members in developing meeting agendas, and develop reports (semi-annually and final). Applicants who wish to be considered for the position of consortium leader should indicate so in their application by including a separate section in the application with a budget and details on how this work is to be accomplished.

Ten agencies will receive grant awards. Five grants will be awarded to agencies in States that have placed over 400 children per year during the past three years, and five grants will be awarded in States that have placed between 200 and 400 children per year during the past three years.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

- Provide documentation of the number of children placed in the State each year during the past three years.
- Describe plans for establishing a post-legal adoption program and how these post-legal services would be an integral part of the delivery of adoption services in the State.
- Identify and describe the number and types of families in the area that would be served.
- Describe the services that would be developed or provided such as individual/group counseling, therapy and other intervention models to be used with families.
- Describe any collaborative efforts with other agencies or adoptive parent groups currently providing support services to families which would be undertaken.
- Describe how the project would be supported, if successful, beyond the period of Federal support.
- Provide assurances that one representative who can speak for the project would attend each semi-annual consortium meeting in Washington, DC.
- Provide assurances that at least one key person from the project would attend the annual three-day Adoption Opportunities Grantees Meeting in Washington, DC.
- Certify that the project would be staffed and implemented within 90 days of the notification of the grant award.

If the applicant is not a public agency, the application must provide evidence that a collaborative arrangement has been established for the purpose of carrying out the proposed project.

*Project Duration:* The length of the project must not exceed 36 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $175,000 for the first 12-month budget period or a maximum of $525,000 for a 3-year project period.

The maximum Federal share for the project selected as the consortium leader is not to exceed $205,000 for the first 12-month budget period or a

maximum of $615,000 for a 3-year project period.

*Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $525,000 is $175,000 for a 3-year project period. This constitutes 25 percent of the total project budget.

For the consortium leader, the minimum non-Federal matching requirement in proportion to the maximum Federal share of $615,000 is $205,000 for a 3-year project period. This constitutes 25 percent of the total project budget.

*Anticipated Number of Projects to be Funded:* It is anticipated that ten grants will be funded.

1.25 Field Initiated Proposals to Improve Adoption Services to Children With Special Needs

*Eligible Applicants:* State, regional or local public child welfare or adoption agencies and voluntary child welfare or adoption agencies or organizations. Voluntary agencies which apply should coordinate their applications with relevant public agencies.

*Purpose:* To improve adoption services for children with special needs in areas which are not addressed under other priority areas in this announcement. This priority area provides public and voluntary agencies and organizations involved in the adoption process with an opportunity to present innovative ideas for improving child welfare and adoption systems.

*Background Information:* Public child welfare workers who provide adoption services are overburdened because of staff shortages and increasing child welfare caseloads. In many public agencies, adoption staff are expected to provide services not only to children with special needs and their potential adoptive families, but also to families requesting independent, intercountry and other types of adoption services. This places substantial burdens on the limited agency adoption resources which are needed to serve the special needs population.

At any given time, approximately 30,000 children are legally free for adoption. Minority children continue to be over-represented among this group. Older children and sibling groups also continue to present unique challenges. Other subpopulations, such as drug-exposed infants, will be, or are currently, testing the capacity of adoption programs. Innovative efforts, embodying the spirit of public-private partnerships, are needed to provide permanent adoptive homes for all waiting children.

In recognition of the many different issues that face the public and voluntary sectors, field initiated proposals are being solicited for demonstration projects that address areas which agencies consider most problematic in serving children with special needs for whom adoption is the plan. These proposals must be innovative; they cannot be a replication of a previous project or respond to other priorities in this announcement.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

- Describe the current adoption program and the specific problem(s) that would be addressed.
- Describe the approach that would be used to alleviate the problem(s).
- Document that this is a new approach that has not been used before based on a review of the literature and any other relevant sources.
- Provide specific written commitments from cooperating or collaborating agencies, if any.
- Describe the arrangements that would be made to contract with a third party to conduct an independent evaluation of the project, and describe in detail the design that would be implemented. The evaluation should determine both the benefits to the agency as well as related child and family outcome measures (e.g., placement rates, number of children placed, disruption rates).
- Describe how the agency would incorporate successful results of the project into its ongoing program.
- Provide assurances that at least one key person from the project would attend the annual three day Adoption Opportunities Grantees Meeting in Washington, DC.
- Provide assurances that the project would be staffed and implemented within 90 days of the notification of the grant award.

*Project Duration:* The length of the project must not exceed 24 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $125,000 for the first 12-month budget period or a maximum of $250,000 for a 2-year project period.

*Matching Requirements:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $250,000 is $83,333 for a 2-year project period. This constitutes 25 percent of the total project budget.

*Anticipated Number of Projects to be Funded:* It is anticipated that six projects will be funded.

1.26A Temporary Child Care for Children with Disabilities and Chronically Ill Children, and 1.26B Crisis Nurseries

*Eligible Applicants:* State agencies designated by the Governor of the State to carry out programs funded under sections 5117a and 5117b of the Temporary Child Care for Children with Disabilities and Crisis Nurseries. Other State agencies carrying out similar programs are ineligible.

States, including those currently receiving financial assistance under these programs, may apply under one or both priority areas described below. A separate application, however, must be submitted under each priority area. Applications must clearly indicate whether they are being submitted under 1.26A, Temporary Child Care for Children with Disabilities and Chronically Ill Children, or 1.26B, Crisis Nurseries.

*Purpose:* To support States in their efforts to assist private and public agencies in developing two types of services:

- In-home or out-of-home temporary non-medical child care (respite care) for children with disabilities and children with chronic or terminal illnesses, including children with AIDS or AIDS-related conditions (priority area 1.26A); and
- Crisis nurseries for abused and neglected children, children at risk of abuse and neglect, or children in families receiving protective services (priority area 1.26B).

Special attention should be paid in both priority areas to the needs of drug-affected infants.

*Background Information:* The Temporary Child Care for Children with Disabilities and Crisis Nurseries Act of 1986 (the Act) authorizes grants to States to assist public and private agencies in developing temporary child care or respite care services for children with disabilities and crisis nurseries for children who are abused or neglected, at risk of abuse and neglect, or in families receiving protective services. These programs are intended to maintain and support the family unit and strengthen the parent-child bond. Programs were funded under this Act in FYs 1988, 1989 and 1990. Additional funding was appropriated in FY 1990 for the support of temporary child care and crisis nurseries programs which place special emphasis on serving drug affected children and families. Also in FY 1990, HDS funded, through a limited competition, final continuation grants for projects originally funded in FY 1988

Grantees funded in FY 1989 will be eligible for limited competition continuation grants in FY 1991. These competitive continuation grants will be awarded outside of this program announcement.

*Section 5117a of the Act: Temporary Child Care for Children with Disabilities and Chronically Ill Children (Priority Area 1.26A)*

The purpose of establishing a temporary child care program (also known as respite care) for children with disabilities or who are chronically or terminally ill is to alleviate social, economic, and financial stress among the families of such children. Such care provides the families or primary caregivers with periods of temporary relief from the pressures of the demanding child care routine, thus preventing severe family stress.

The Act authorizes temporary child care programs for children with disabilities and requires applicants seeking temporary child care funds to define disabilities using the definition in the Education of the Handicapped Act, "* * * as mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or children with specific learning disabilities who, by reason thereof, require special education or related services." (20 U.S.C. 1401 (a)(1))

The following components may be included in temporary child care or respite care projects:

- 24-hour services;
- Access to primary medical services;
- Referral to counseling/therapy services;
- Staff training, including child abuse/neglect reporting responsibilities; and
- Public awareness programs.

*Section 5117b of the Act: Crisis Nurseries (Priority Area 1.26B)*

A "crisis nursery" is defined in section 5117c(d) of the Act to mean a center providing temporary emergency services and care for children. Crisis nurseries are child care facilities which protect children by providing a safe environment at a time when the chances of neglect or abuse in the home are increased.

The programs offer parents the option of "time out" as a preventive measure in reducing the incidence of child maltreatment. They are designed to: (1) Develop a safe environment as a resource for children at risk of abuse; (2) deliver nonpunitive, nonthreatening services as a resource to caregivers of at-risk children; and, (3) utilize existing community-based services to further diminish the potential for the maltreatment of children in families experiencing crisis. Services funded under section 5117b of the Act must be provided without fee and may be provided for a maximum of 30 days in any year. Crisis nurseries must also provide referral to support services.

The following components may be included in crisis nursery programs:

- 24-hour services;
- Referral to counseling/therapy services, including out-of-home placement (when appropriate);
- Access to primary medical services;
- Staff training, including child abuse/neglect reporting responsibilities; and
- Public awareness programs.

*Minimum Requirements for Project Design:* In order to successfully compete under one or both of these priority areas, the application should:

- Provide documentation of the State's commitment to develop a State plan for coordination among agencies carrying out programs and activities provided by the State pursuant to a temporary child care grant under section 5117a. (Section 5117a(a)(v))
- Describe the proposed State program to assist private and public agencies or organizations in providing in-home or out-of-home temporary, nonmedical care to children with disabilities and children with chronic or terminal illnesses, including drug-related conditions and children with AIDS or AIDS-related conditions, or crisis nurseries for abused and neglected children.
- Describe how funds previously awarded to the State under this statute have been used and how the new funds being requested would be used to enhance or expand the program.
- Describe the services to be provided, the agencies and organizations that would provide the services and the criteria that would be employed in the selection of children and families for participation in the project. (Section 5117c(a)(1)(A))
- Describe State plans for the submission of an annual report to the Secretary evaluating the programs that are funded, including information on costs, number of participants, impact on family stability, incidence of child abuse and neglect and such other information as the Secretary may require. Describe fully how this requirement would be met and specifically describe how the data required to provide this information would be collected.
- Describe a plan for dissemination of the results of the programs and projects funded under the Act. (Section 5117c(a)(1)(A)(iii))
- Provide assurances and adequate budget funds to support at least one key person from the State agency and one key person from each service provider site receiving funds from the grant to attend an annual 2–3 day conference in Washington, DC.
- Provide assurances that travel to these conferences will not be subject to any limitations on travel which may be imposed on State employees.
- Provide the following assurances as required by statute:

(1) That not more than 5 percent of the funds made available under each section of the Act would be used for State administrative costs.

(2) That projects funded by the State would be of sufficient size, scope and quality to achieve the objectives of the program.

(3) That, in the distribution of funds under the "Temporary Child Care" program, the State would give priority consideration to agencies and organizations which have experience in working with disabled, terminally ill, and chronically ill children and their families and which serve communities which demonstrate the greatest need for such services.

(4) That, in the distribution of funds under the "Crisis Nurseries" program, the State would give priority consideration to agencies and organizations with experience in working with abused or neglected children and their families; in working with children at high risk of abuse and neglect and their families; and in serving communities which demonstrate the greatest need for such services.

(5) That Federal funds made available under these programs would be used to supplement and, to the extent practicable, increase the amount of State and local funds available for these purposes, and in no case supplant such State or local funds.

(6) That the State would use the definition of handicapped children found in 20 U.S.C. 1401(a)(1) of the Education of the Handicapped Act in implementing programs under the "Temporary Child Care" program.

(7) That all agencies and organizations funded under the "Temporary Child Care" program would provide child care only on a sliding fee scale with hourly and daily rates.

(8) That the services provided under the "Crisis Nurseries" program would be provided without fee and for a maximum of 30 days in any year.

*Project Duration:* The length of the project must not exceed 36 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $200,000 for the first 12-month budget period or a maximum of $600,000 for a 3-year project period.

*Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $600,000 is $200,000 for a 3-year project period. This constitutes 25 percent of the total project budget.

*Anticipated Number of Projects to be Funded:* It is anticipated that approximately 26 projects, 13 under each priority area, will be funded.

1.27 National Resource Center for Crisis Nurseries and Respite Care Programs

*Eligible Applicants:* State agencies designated by the Governor of the State to carry out programs funded under sections 5117a and 5117b, Temporary Child Care for Children With Disabilities and Crisis Nurseries Act (the Act), including current grantees under the Act, are eligible to apply. Other State agencies carrying out similar programs are ineligible to apply.

*Purpose:* The purpose of this Resource Center is to assist in the coordination, exchange of information, continuing development and improvement of the types of services described in section 5117a and section 5117b of the Temporary Child Care for Children With Disabilities and Crisis Nurseries Act whether or not the service providers receive Federal funds from the programs authorized under the Act. These services are:

(1) In-home or out-of-home temporary nonmedical child care (respite care) for children with disabilities and children with chronic or terminal illnesses (Section 5117a); including children with AIDS or AIDS-related conditions, and

(2) Crisis nurseries for abused and neglected children, children at risk of abuse and neglect, or children in families receiving protective services (Section 5117b).

Both types of service also address the needs of drug-affected infants.

*Background Information:* Since 1988, HDS has awarded 90 grants to States to support respite care services and crisis nurseries through the Temporary Child Care for Children With Disabilities and Crisis Nurseries Program. Through these State agency grantees, over 200 local service providers have been recipients of the $20 million awarded thus far. In addition, other projects, not utilizing Federal funds under this program, have been developed and implemented in local communities designed to address the needs of similar target populations.

Respite care programs are designed to alleviate social, economic, and financial stress among families of children with disabilities or children who are chronically or terminally ill through the provision of short-term, nonmedical child care. Such respite care provides families or primary care givers with periods of temporary relief from the pressures of the demanding child care routine, thus preventing severe family stress. Respite care programs generally provide 24-hour services, access to medical services; referral to counseling/therapy; staff training, including child abuse/neglect reporting responsibilities; and public awareness efforts.

Crisis nurseries are child care facilities designed to protect children by providing a safe environment at a time when the chances of neglect or physical abuse in the home are increased. These programs offer parents the option of "time out" as a preventive measure to reduce the incidence of child maltreatment. In general, crisis nursery programs provide many of the same services as respite care programs but also place greater emphasis on intervention, remediation and prevention services including referrals for out-of-home placement, when appropriate.

Although a significant number of respite care and crisis nursery projects have been developed, knowledge about effective services is relatively limited. Existing programs vary considerably in terms of quality, experience, and methodology. However, the demand for services is increasing as fewer disabled children are institutionalized and as substance abuse impacts greater numbers of children and families. Additional resources are needed to assist in identifying, developing and utilizing effective program practices, information and materials in order to meet this service demand.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

- Demonstrate knowledge about the problems and issues involved in providing services for children with disabilities and children at risk of abuse and neglect.
- Provide documentation of the commitment to improving the quality of respite care and crisis nurseries programs and services.
- Describe a plan for identifying emerging issues from the fields of child welfare, developmental disabilities, and child health, particularly as they relate to prenatal drug exposure and pediatric HIV infection.
- Describe a plan for preparing and disseminating information and policy papers to the field which address these emerging issues.
- Describe a plan for coordinating activities with other National Resource and Research Centers funded by HDS and by other related resource centers to assure effective utilization of resources.
- Describe a plan for holding at least one national conference a year for relevant service providers.
- Describe a strategy for identifying innovative and/or exemplary programs, including the conduct of research and/or evaluation efforts, and for disseminating information about innovative and/or exemplary programs.
- Describe a strategy for identifying, documenting and developing innovative and/or exemplary resources such as training curricula and manuals and for assisting the field in adapting such resources to meet specific needs.
- Describe a plan for providing technical assistance, training and consultation to service providers and to State agencies to improve professional competency, to insure service coordination and integration, and to promote the utilization of resources and best practices related to the management and administration of respite care programs and crisis nurseries.
- Describe a plan for developing a national network of professionals in the field to serve as consultants and for linking these individuals with individuals and agencies requesting assistance.
- Provide assurances that at least one key staff member would attend an annual 2–3 day meeting in Washington, DC, of Children's Bureau grantees.
- Provide assurances that not more than 5 percent of the funds awarded would be used for State administrative costs.
- Outline a plan for interaction with HDS for implementation under a cooperative agreement, including as appropriate, activities involving Headquarters and Regional Office staff. (A cooperative agreement is Federal Assistance in which substantial Federal involvement is anticipated. The respective responsibilities of Federal staff and the awardee are negotiated prior to the award.)

*Project Duration:* The length of the project must not exceed 36 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $500,000 for the first 12-month budget period or a maximum of $1,500,000 for a 3-year project period.

*Matching Requirement:* There is no matching requirement.

*Anticipated Number of Projects to be Funded:* It is anticipated that one project will be funded as a cooperative agreement.

*Length of Proposal:* The 60 page limitation for proposals including appendices stated in part III of this announcement does not apply to this priority area.

1.28 National Resource Center for Programs Serving Abandoned Infants and Infants at Risk of Abandonment and Their Families

*Eligible Applicants:* State or local, public or private nonprofit agencies or organizations.

*Purpose:* The purpose of this Resource Center is to assist in the coordination, exchange of information, continuing development and improvement of the types of services described in Public Law 100–505, the Abandoned Infants Assistance Act of 1988 (the Act) whether or not the service providers receive Federal funds from the program authorized under the Act. The Act establishes demonstration projects to prevent abandonment in hospitals of infants and young children, particularly those who have been exposed to drugs and those with AIDS; to identify and address the needs of those who are, or might be, abandoned; to develop a program of comprehensive services for these children and their families including family foster care services, case management services, family support services, respite and crisis intervention services, counseling services, and group residential care services; and to recruit and train health and social services personnel, foster care families and residential care providers to meet the needs of abandoned children.

*Background Information:* In 1990, HDS awarded 24 grants to agencies under a variety of auspices including public and private social services, developmental disabilities and health agencies, hospitals and universities. These programs, as well as others funded through other resources, are in the early stages of implementation. The programs are designed to meet the immediate needs of the children and their families, to address problems of community coordination and better utilization of scarce resources and to develop systems which will meet the longer-term needs of the children.

Although a significant number of abandoned infants projects have been developed, knowledge about effective services is relatively limited. Existing programs vary considerably in terms of quality, experience and methodology. However, the demand for such services is increasing as substance abuse and pediatric AIDS impact greater numbers of children and families. HDS intends to support the establishment of a National Resource Center to assist in identifying, developing and utilizing effective program practices, information and materials in order to meet this service demand.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

- Demonstrate knowledge about the problems and issues involved in planning and providing services for abandoned infants and young children.
- Provide documentation of the commitment to improve the quality of programs and services for infants and young children who are abandoned or in danger of abandonment and their families.
- Describe a plan for identifying emerging issues from the fields of child welfare, developmental disabilities, and maternal and child health, particularly as they relate to prenatal drug exposure and pediatric HIV infection.
- Describe a plan for coordinating activities with other National Resource and Research Centers funded by HDS and by other sources.
- Describe a plan for holding at least one national conference a year for relevant service providers.
- Describe a strategy for identifying innovative and/or exemplary programs and for disseminating information about these programs.
- Describe a strategy for identifying, documenting and developing innovative and/or exemplary resources such as training curricula and manuals and for assisting the field in adapting such resources to meet specific needs.
- Describe a plan for providing technical assistance, training and consultation to service providers and to State agencies to improve professional competency, to insure service coordination and integration, and to promote the utilization of resources and best practices related to the management and administration of abandoned infants assistance programs.
- Describe a plan for developing a national network of professionals in the field to serve as consultants and for linking these individuals with persons and agencies requesting assistance.
- Provide assurances that at least one key staff member would attend an annual 2–3 day meeting of Children's Bureau grantees in Washington, DC.
- Outline a plan for interaction with HDS for implementation under a cooperative agreement including, as appropriate, activities involving Headquarters and Regional Office staff. (A cooperative agreement is Federal Assistance in which substantial Federal involvement is anticipated. The respective responsibilities of Federal staff and the awardee are negotiated prior to the award.)

*Project Duration:* The length of the project must not exceed 36 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $500,000 for the first 12-month budget period or a maximum of $1,500,000 for a 3-year project period.

*Matching Retirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $1,500,000 is $500,000 for a 3-year project period. This constitutes 25 percent of the total project budget.

*Anticipated Number of Projects to be Funded:* It is anticipated that one project will be funded as a cooperative agreement.

*Length of Proposal:* The 60 page limitation for proposals including appendices stated in part III of this announcement does not apply to this priority area.

1.29 National Resource Center for Family Support Programs

*Eligible Applicants:* Public or private nonprofit organizations with experience in providing support services to programs which directly impact family functioning and stability and which have the ability to provide technical assistance, to facilitate the exchange of information, to develop materials, and to provide other appropriate resources.

*Purpose:* To assist in the coordination, exchange of information, continuing development and improvement of services provided by community-level family support and family resource programs and to encourage the growth of additional programs.

*Background Information:* Over the past decade, there has been a significant growth in community-level family support and resource programs. The Head Start program, for example, has grown almost threefold since 1980. These programs seek to serve families in order to prevent a range of problems (e.g., lack of access to needed child development and medical services because of low income, substance abuse, child abuse, child neglect, teenage pregnancy, and related family problems) and to enhance the ability of families to function through the provision of parenting education and other supportive services and information and referral to community

resources. Community level family support and resource programs are designed to increase parents' confidence and competence in their parenting abilities and to help them fulfill their roles as educators of their children. Children, in turn, benefit from the improved child-rearing practices and a more secure and nurturing home environment.

Today's families are subject to increased stress because of the increasing number of mothers in the work force; the changes in family structure brought about by divorce, remarriage, and single parenthood, especially among teenagers; the increasing geographic mobility of families; and the growing rate of poverty among children, particularly in single-parent households.

The result of these changes is a growing isolation and frustration among families, which is compounded by the breakdown of or limited access to traditional sources of support or relief. This places young children at risk of a range of social problems, including a lack of preparation for school, inadequate health care, poor nutrition, and child abuse and neglect. These problems, if not addressed, increase the risk later of school failure, teenage pregnancy, substance abuse, and delinquent or criminal behavior.

Family support programs, such as Head Start and other family-oriented programs, are designed to help a family build on its existing strengths. Emphasis is placed on prevention, on building and/or maintaining self-sufficiency, and on building the capacity to nurture and rear capable children. The programs respect the integrity of the family unit, promote the development of life-management skills, encourage peer support, and link families with needed resources through collaboration with community agencies and services. They maintain a grassroots, local community base which is sensitive to the cultural, ethnic, and religious character of the community.

Many family support programs started locally as the result of grassroots initiatives, and nearly all maintain local control. Many services are initiated by volunteers and volunteer help continues to be an important component in most family support programs. They operate under a wide range of auspices, with a wide variety of funding sources, many of which are time limited. They are in frequent need of technical assistance on various aspects of administration, funding and maintenance of program operations, staff training and enhancing community linkages.

Family support programs tend to vary considerably in terms of quality, experience, and capacity. Additional resources are needed to strengthen prevention-oriented family programs, to foster their expansion nationwide, to create and strengthen linkages between prevention-based and treatment-based services, and to strengthen this movement.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

- Demonstrate knowledge about the problems of family support, about family-oriented programs such as Head Start and others, and about the services required to meet the needs of families.
- Provide evidence of commitment to improving the quality of family resource programs and to expanding their ability to help families.
- Describe a plan for building public awareness of the resources required to improve programs and to enhance funding.
- Describe a plan for coordinating activities with other National Resource and Research Centers funded by HDS, such as the Head Start Regional Resource Centers, as well as with other related resource centers to assure effective utilization of resources.
- Describe a strategy for identifying, documenting and disseminating information about innovative and/or exemplary family support programs.
- Describe a strategy for identifying, documenting and developing innovative and/or exemplary resources such as training curricula and manuals and for assisting the field in adapting such resources to meet specific needs.
- Describe a plan for providing technical assistance, training and consultation to family support centers to improve competency, to ensure coordination and collaboration with other community and professional services and to promote the utilization of resources and best practices related to the management and administration of the programs.
- Describe a plan for developing a national network of professionals in the field to serve as consultants and for linking these resources with individuals and programs requesting assistance.
- Provide assurances that at least one key staff member would attend an annual 2–3 day meeting in Washington, DC of projects funded by the Children's Bureau under this announcement.
- Outline a plan for interaction with HDS for implementation under a Cooperative Agreement, including, as appropriate, activities involving Headquarters and Regional Office staff. (A Cooperative Agreement is Federal assistance in which substantial Federal involvement is anticipated. The respective responsibilities of the Federal staff and the awardee will be negotiated prior to the award.)

*Project Duration:* The length of the project must not exceed 36 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $400,000 for the first 12-month budget period or a maximum of $1,200,000 for a 3-year project period.

*Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $1,200,000 is $400,000 for a 3-year project period. This constitutes 25 percent of the total project budget.

*Anticipated Number of Projects to be Funded:* It is anticipated that one project will be funded as a Cooperative Agreement.

*Length of Application:* The 60-page limitation stated in Part III of this announcement does not apply to this priority area.

1.30 Field Initiated Research in Child Welfare by Recent Recipients of Doctoral Degrees

*Eligible Applicants:* Only universities and four year colleges may apply. Individuals may not apply directly for these grants.

*Purpose:* To support pilot projects initiated by new researchers in the child welfare field. The principal investigator must have a terminal research degree (e.g., PhD, DSW, DPH, DPA, MD, etc.), but not be more than five years beyond it at the time of award. The pilot research projects should be designed to lay the groundwork for continuing research in the field of child welfare by the investigator. The research topic area should be such that subsequent research activities in the area will inform State and local (public and private) agencies on ways to improve policy, practice, management and evaluation of child welfare programs.

*Background Information:* There is a continuing need in the child welfare field to generate new knowledge to guide the delivery of services to children and their families. Issues need to be raised and research projects developed which challenge assumptions about the nature and needs of the clients, service delivery strategies, and effective policies and practices. Consequently, it is critical to provide opportunities for new researchers to enter the child welfare field.

Pilot projects could include the range of services which are delivered by

public and private child welfare agencies including, but not limited to, services to prevent foster care, foster care, reunification services, independent living, adoption (particularly special needs), and post-adoption services. Projects may also address the development of valid, reliable and appropriate outcome measures for children and their families or measures of service system delivery effectiveness and efficiency. Economic issues could also be addressed. Applicants are encouraged to develop projects which take an original viewpoint and/or propose an innovative methodology.

Projects which primarily address issues in child abuse and neglect, day care, child development, and runaway and homeless youth, which are primarily secondary data analyses, research synthe ses, or literature reviews, and which are included under other research priority areas in this announcement will not be supported under this priority area. Research projects involving demonstration projects or clusters of such projects will be supported only if the research to be conducted is distinct from the evaluation of these demonstration projects.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

- Briefly describe, based on a review of the literature, how the pilot project would assist in carrying out a major effort which would fill a critical gap in the information needed to improve policy, practice, management and/or evaluation in child welfare programs.
- Describe the overall research design that would be employed for the pilot project, including sampling procedures, types of data to be collected, procedures for data collection, measures to be used and plans for data analysis.
- Describe how the information from the pilot project would be used to design a larger, more comprehensive project.
- Describe the strategies for conducting the larger project after the pilot project is completed.
- Describe the strategy(ies) that would be employed in gaining access to necessary information, data and clients.
- Describe the strategies that would be employed in the dissemination of findings in a manner that would be of use to other researchers and practitioners in the field.
- Provide assurances that the principal investigator would attend a 2–3 day grantees' meeting in Washington, DC.

*Project Duration:* The length of the project must not exceed 17 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $40,000 for the 17-month project period.

*Matching Requirement:* There is no matching requirement.

*Anticipated Number of Projects to be Funded:* It is anticipated that two projects will be funded.

1.31 Field Initiated Research in Child Welfare

*Eligible Applicants:* State or local, public or nonprofit, agencies, universities, organizations or institutions.

*Purpose:* To support innovative projects initiated by researchers in the child welfare field. The research should be designed to inform State and local (public and private) agencies of ways to improve policy, practice, management and evaluation of child welfare programs.

*Background Information:* There is a continuing need in the child welfare field to generate new knowledge to guide the delivery of services to children and their families. Issues need to be raised and research projects developed which challenge assumptions about the nature and needs of the clients, service delivery strategies, and effective policies and practices.

Research topics can include the range of services which are delivered by public and private child welfare agencies including, but not limited to, services to prevent foster care, foster care, reunification services, independent living, adoption, and post-adoption services. Projects may also address the development of valid, reliable and appropriate outcome measures for children and their families or measures of service delivery effectiveness and efficiency. Economic issues could also be addressed. Applicants are encouraged to develop projects which take an original viewpoint and/or propose an innovative methodology.

Projects which primarily address issues in child abuse and neglect, day care, child development, and runaway and homeless youth, which are primarily secondary data analyses, research syntheses, or literature reviews, and which are included under other priority areas in this announcement will not be supported under this priority area. Research projects involving demonstration projects or clusters of such projects will be supported only if the research to be conducted is distinct from the evaluation of these demonstration projects.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

- Describe, based upon a review of the literature, how the project would fill a critical gap in information needed to improve policy, practice, management and/or evaluation in child welfare programs.
- Describe the overall research design that would be employed including sampling procedures; types of data to be collected; procedures for data collection, instruments and measurements to be utilized, adapted or developed, including assessments of their reliability and validity; and plans for data analysis.
- Discuss the scientific merit of the design selected including a discussion of the design's strengths and weaknesses, the identification of alternative designs which were considered but rejected and the reasons for rejecting them.
- Indicate ability to gain access to necessary information, data and clients.
- Describe the strategies that would be employed in the dissemination of findings in a manner that would be of use to other researchers and practitioners in the field.
- Provide assurances that the principal investigator would attend a 2–3 day annual meeting of grantees in Washington, DC.

*Project Duration:* The length of the project must not exceed 36 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $125,000 for the first 12-month budget period or a maximum of $375,000 for a 3-year project period.

*Matching Requirement:* There is no matching requirement.

*Anticipated Number of Projects to be Funded:* It is anticipated that two projects will be funded.

*Length of Proposal:* The 60 page limitation for proposals stated in part III of this announcement does not apply to this priority area.

*National Center on Child Abuse and Neglect*

On October 3, 1990, a notice soliciting comments on the National Center on Child Abuse and Neglect's (NCCAN) proposed priority areas for FY 1991 was published in the **Federal Register**. A 60-day period was required to allow the public to comment on the proposed areas. After review and analysis of these comments, NCCAN is publishing its final priorities.

NCCAN received 156 written responses. Four comments addressed the low level of funding reflected for the proposed priority areas and recommended either an increase in funds or a decrease in the number of proposed priority areas. Eight responses expressed concern that the issue of

substance abuse and its relationship to child maltreatment was not fully addressed. This topic will be addressed by a new discretionary grants program entitled the "Emergency Child Abuse Prevention Services Grant Program." A program announcement dealing with priorities for funding under the program is expected to be published by April 1991. Comments were also submitted for each of the five research and demonstration priority areas, along with recommendations on symposia topics, the 1994 National Conference on Child Abuse and Neglect, and on additional topics.

The responses came from a variety of sources, including a Congressman; representatives of State and local public social welfare and law enforcement agencies and the judiciary; national, State and local nonprofit organizations; universities and students; hospitals, medical centers and mental health services; service providers and practitioners; the U.S. Advisory Board on Child Abuse and Neglect; and private citizens. The largest number of responses came from universities followed by nonprofit organizations.

The responses were generally in support of the five research and demonstration priority areas and the symposia topics included in the announcement. The largest group of respondents (61) wrote in support of interdisciplinary graduate training programs. This concern has been addressed by expanding the first two NCCAN research priority areas to encourage collaborative efforts and interdisciplinary approaches and programs. In addition, the issue of interdisciplinary training is also addressed in the current Children's Bureau priority area entitled "Interdisciplinary Training Programs for Child Welfare." Fourteen respondents supported a greater focus on prevention activities.

To the extent feasible, NCCAN addressed these comments in preparing its final FY 1991 priority areas. Comments intended to further clarify and focus the priorities were incorporated into the revised descriptions. For example, based on comments indicating the need to include females as well as males in research on juvenile sexual offenders, this priority area has been expanded to include female juvenile sexual offenders. Changes were also made in terminology based upon the comments received. The comments that were not used in developing the final priority areas were those which either included topics encompassed by the priorities as they were originally proposed or could not be addressed due to funding constraints.

1.32 Collaborative Arrangements Between State Child Welfare Agencies and State Title IV–A Agencies to Train Job Opportunity and Basic Skills (JOBS) Participants to Work as Child Protective Services Paraprofessionals

*Eligible Applicants:* State child welfare/child protective services agencies and State title IV–A agencies. Applications developed jointly by these State agencies are encouraged.

*Purpose:* To provide support for the preparation and training of paraprofessionals in the child protection field.

*Background Information:* A major area of concern to HDS and to the child abuse field in general is the overwork and heavy caseloads experienced by many child protective services (CPS) workers. This situation has led in many localities to burnout and high turnover which has restricted the ability of public agencies to deliver needed services.

HDS is interested in the potential offered by the Job Opportunity and Basic Skills (JOBS) program to provide innovative ways to support the work of child protective services workers and, in some cases, to enable public agencies to augment current services.

The August 1990 report of the U.S. Advisory Board on Child Abuse and Neglect states that "reported cases of child maltreatment have more than doubled in the past decade * * * The child protection system has not expanded to meet the challenges posed by these changes. The huge increase in cases has not only affected the CPS agencies charged with investigating cases. It also has had significant effects on law enforcement agencies, juvenile and criminal courts, prosecutor offices, public defender offices, and mental health agencies involved with investigating, adjudicating, or treating maltreated children and their families." These same stressors, it should be noted, are also adversely impacting the ability of child welfare agencies to develop and support innovative efforts to prevent child maltreatment.

The Family Support Act of 1988 (the Act) authorized the JOBS program, which shifts the primary purpose of the Aid to Families with Dependent Children program from providing cash assistance to helping welfare recipients become employed and self-sufficient. The Act required that all States implement the JOBS program, which provides education, job training, and work activities for participants, by October 1, 1990.

Participants in the JOBS program can constitute a valuable resource to State CPS agencies. Participants, through the education and training supported by the JOBS program, could be trained as paraprofessionals to work in support roles with child protection and child welfare professionals or to augment the services provided by these professions in capacities such as "home visitors."

HDS is interested in soliciting joint applications from State child welfare/child protection agencies and State title IV–A agencies to address the preparation, training and employment of paraprofessionals in the child protection field.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

- Provide evidence of collaborative arrangements between State child welfare agencies and State title IV–A agencies to provide training to JOBS participants.
- Describe the specific paraprofessional role(s) for which JOBS participants would be trained and the training plans for these positions and planned employment opportunities.
- Describe the criteria which would be used for the selection of trainees to participate in the program, and the number of trainees anticipated.
- Describe the characteristics of the persons that would be trained including family size and composition, ethnicity, income level, and other relevant variables.
- Detail the types of training that would be provided, how these would be determined, and the methods of training that would be employed.
- Describe how the demonstration training project would be evaluated and by whom and the measures that would be employed to determine its effectiveness in preparing paraprofessionals and in enhancing the capacity of the CPS workforce.
- Describe how training materials would be developed which could be used in the replication of the project.

*Project Duration:* The length of the project must not exceed 24 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $100,000 for the first 12-month budget period or a maximum of $200,000 for a 2-year project period.

*Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $200,000 is $66,667 for a 2-year project period. This constitutes 25 percent of the total project budget.

*Anticipated Number of Projects to be Funded:* It is anticipated that two projects will be funded.

1.33 National Resource Centers on Child Abuse and Neglect

*Eligible Applicants:* State, local, public or nonprofit organizations or agencies including accredited colleges and universities. Applications developed jointly by State, local, and community-based social services agencies, foundations, colleges or universities are encouraged.

*Purpose:* To provide information and technical assistance to State and local, public and private child welfare agencies, law enforcement agencies, medical and mental health agencies, community groups and other appropriate entities and individuals on the development, expansion, strengthening, and improvement of the quality and effectiveness of services to children and families regarding child maltreatment.

*Background:* Section 106(b) of the Child Abuse Prevention and Treatment Act, as amended, requires that Resource Centers be established that serve defined geographic areas; that are staffed by multi-disciplinary teams of personnel trained in the prevention, identification and treatment of child abuse and neglect; and that provide advice and consultation to individuals, agencies and organizations which request such services. To comply with that mandate, HDS seeks to support a Child Abuse and Neglect Resource Center and a Child Sexual Abuse Resource Center through Cooperative Agreements. Both Centers are expected to have qualified personnel, adequate resources and the organizational, professional and educational capacities to carry out the intent of the legislation.

On a nationwide basis, the National Resource Center on Child Abuse and Neglect will provide leadership, resource information and materials, technical assistance and professional consultation in the prevention, identification, diagnosis and treatment of child abuse and neglect; the training of professionals in the field of child abuse and neglect; and the identification, verification and dissemination of best practices and treatment models.

On a nationwide basis, the National Resource Center on Child Sexual Abuse will provide leadership, resource information and materials, technical assistance and professional consultation in the prevention, identification, diagnosis and treatment of child sexual abuse; the investigation, management and prosecution of child sexual abuse cases from the initial report through disposition; the training of professionals in the field of child sexual abuse; and the identification, verification and dissemination of best practices and treatment models.

The two proposed Resource Centers will provide assistance to State and local agencies, organizations and individuals involved in child abuse and neglect prevention, identification and treatment and in related fields. To that end, questions related to the type and extent of the assistance needed by the field must be addressed, as well as questions related to how to ensure that the latest knowledge on the prevention, identification and treatment of child abuse and neglect, or child sexual abuse, will be provided. In addition, the provision of assistance and consultation must be conducted in a manner that takes into account varying circumstances and conditions in the field and the client population, requiring that questions of flexibility, options for delivery and appropriateness of content be addressed.

It is expected that each Center would have a knowledge building and dissemination capacity and exhibit a systematic approach to developing issues for the field. To that end, each Center would analyze and synthesize the results of research, including that funded by Federal, State and local agencies, foundations, advocacy organizations, professional associations, and universities; convene work groups and conferences and publish and disseminate proceedings on the state of the art in selected areas of research and on research methodologies; identify areas where new research is needed to inform policy and practice and suggest next steps for completed research. In addition, each Center would compile information on evaluation approaches utilized by Federal, State and local agencies, foundations, advocacy organizations, professional associations, and universities; convene work groups and conferences and publish and disseminate proceedings on the state of the art of program evaluation; facilitate sharing information across public and private agencies at the local, State and national levels; provide technical assistance on the design and procedures for conducting evaluations to determine successful approaches to the identification, investigation, prevention and treatment of child maltreatment and for training personnel to carry out these programs. Centers would also identify, develop and disseminate findings and implementation packages for replication of effective identification, prevention, treatment and training programs; and identify new areas of demonstration and service improvement needed to combat child maltreatment.

Specific objectives related to the Centers' efforts to provide assistance will include:

- Identifying emerging child abuse and neglect/child sexual abuse issues and preparing information and policy papers addressing such issues;
- Identifying, documenting and developing innovative or exemplary resources, such as training curricula as well as manuals and studies, and assisting the field in adapting such resources to meet specific needs;
- Providing technical assistance, training and consultation to improve professional competency and to promote the utilization of resources and best practices related to child abuse and neglect and child sexual abuse, including methods and techniques for program implementation and evaluation; and
- Developing a network of professionals in child abuse and neglect and child sexual abuse and coordinating the linkages of these individuals and agencies with persons or agencies requesting information.

HDS intends to support the two Resource Centers through Cooperative Agreements. (A Cooperative Agreement is Federal financial aid in which substantial Federal involvement is anticipated. The respective responsibilities of Federal staff and project staff will be identified and agreed upon prior to award.)

*Minimum Requirements for Project Design:* Applicants may apply to provide resource services in either of the program areas of child abuse and neglect, or child sexual abuse. The application must clearly indicate whether funding is being sought to support a Child Abuse and Neglect Resource Center, or a Child Sexual Abuse Resource Center. In order to successfully compete under this priority area, the application should:

- Describe the immediacy of the need to be addressed and provide information on the specific services the Resource Center proposes to provide to the field.
- Present specific workplans for the provision of assistance to the field that is nationwide in scope and that include the use of an advisory board; a plan for continued contact with the field, including, if appropriate, an 800 telephone number and direct mailings; and a plan for the development and use of a network of experts and for the provision of direct training and consultation, including fees for service, if necessary.

• Describe efforts that would be undertaken to coordinate activities with the Clearinghouse on Child Abuse and Neglect and Family Violence Information, other Resource Centers, the National Alliance for Cultural Competency and Minority Leadership Development, the National Archive on Child Abuse and Neglect, the Consortium for Longitudinal Studies of Maltreatment, and other NCCAN grantees.

• Provide a plan to determine the need for and to implement special projects related to policy issues, training curricula, service delivery models or other aspects of services related to child abuse and neglect or child sexual abuse.

• Provide a plan to evaluate the efficiency and effectiveness of proposed project activities, with specific reference to the purpose and role of the project.

• Describe the staff with appropriate expertise who would provide assistance.

• Describe the administrative and organizational structure and the management plan within which the project would operate. Charts depicting these structures must be included.

• Outline a plan of interaction with HDS for implementation under a cooperative agreement including, as appropriate, activities involving Headquarters and Regional Office staff. (A cooperative agreement is Federal Financial Assistance in which substantial Federal involvement is anticipated. The respective responsibilities of Federal staff and the awardee are negotiated prior to the award.)

*Project Duration:* The length of the project must not exceed 60 months.

*Federal Share of the Project Costs:* The maximum Federal share is not to exceed $400,000 for the first 12-month budget period or a maximum of $2,000,000 for a 5-year project period.

*Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $2,000,000 is $666,667 for a 5-year project period. This constitutes 25 percent of the total project budget.

*Anticipated Number of Projects to be Funded:* It is anticipated that two projects will be funded, a Child Abuse and Neglect Resource Center and a Child Sexual Abuse Resource Center.

1.34 Research on Juvenile Sexual Offenders

*Eligible Applicants:* State or local, public or nonprofit agencies, organizations and institutions of higher learning.

*Purpose:* To identify effective treatment approaches for the pre-adolescent sexual offender to prevent repeat offenses.

*Background Information:* In 1980, HDS funded 14 three-year demonstration projects for the management and treatment of intrafamily child sexual abuse cases. Almost every project found substantial increases in the number of reports of male juvenile sexual offenders in comparison to previous years. In the treatment of adult sexual offenders, these programs also found patterns of perpetration that began during the adolescent years with the victimization of younger children. This finding, along with other research, suggests that the untreated adolescent sexual abuser may become an adult sexual offender. Other studies citing the problem of sex offenses by adolescents have further found that a large number of these offenders have a history of being sexually abused. A study in Washington State also added documentation to the growing concern over the number of pre-adolescent children who are victimizing other children (26 percent were 6 to 12 years old at the time of the sexually aggressive behavior).

The Preliminary Report of the Task Force of the National Adolescent Perpetrators Network, completed in 1988, pointed out that specialized treatment programs had grown significantly from the 20 programs identified in 1982. Most recently, the Nationwide Survey of Juvenile and Adult Sex-Offender Treatment Programs, completed in May 1990 by The Safer Society Program, identified 626 programs that specialized in treatment for the juvenile sexual offender. Over half of these programs provide services to 6 to 12 year old victims who act out sexually. Little, however, is known about the effectiveness of these various treatment approaches or for which juvenile offenders a particular type of treatment is most effective.

HDS is interested in supporting studies that build on current methodologies and research to measure the effectiveness of treatment approaches for this population of 6 to 12 year olds in order to prevent repeat victimization of others. Information is needed on the outcomes of different types of treatment for different lengths of time and for different types of maltreatment and other maladaptive behaviors, and child and family characteristics. Research questions to be addressed also include the relationship between early childhood victimization and perpetration and the identification of the at-risk pre-adolescent population most prone to becoming offenders. HDS recognizes the complexities in assessing the effectiveness of various treatment approaches for the range of typologies represented in this population.

The treatment modalities to be studied are to be defined and the lengths of different types of treatment specified. Methods used for the identification and assessment of the study population along with how the treatment to be offered was determined should be detailed.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

• Demonstrate an indepth understanding of the issues and methodological problems associated with the study of male and female pre-adolescent offenders.

• Include an up-to-date review of the relevant literature and provide for an evaluation of a particular treatment approach for pre-adolescent sexual offenders.

• Provide, at a minimum, for a two-year follow-up after treatment for all children in the study design. This means that treatment should be completed by the end of the third year of the project.

• Describe how multiple outcome measures that are culturally relevant and developmentally appropriate as well as psychometrically sound instruments and multiple sources of information would be used.

• Describe the methodology that would be used in conducting the study, including the overall research design to be employed and, as applicable, sampling procedures, experimental design, kinds of data to be collected, procedures for data collection, the instruments and measurements to be utilized, adapted or developed and the plans for data analysis.

• Indicate the ability to gain access to necessary information, data, and clients.

• Describe strategies for the dissemination of the findings in a manner that would be of use to other researchers and practitioners in the field.

• Provide assurances that at least one key staff person would attend a three-day annual spring meeting in Washington, DC; that the data set would be prepared according to sound documentation practices; and that the final report would be prepared in a format ensuring its ease for dissemination and utilization.

*Project Duration:* The length of the project must not exceed 60 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $200,000 for the first 12-month budget

period or a maximum of $1,000,000 for a 5-year project period.

*Matching Requirement:* There is no matching requirement.

*Anticipated Number of Projects to be Funded:* It is anticipated that two projects will be funded.

1.35 Graduate Research Fellowships in Child Abuse and Neglect

*Eligible Applicants:* Institutions of higher education on behalf of qualified doctoral candidates enrolled in the sponsoring institution. To be eligible to administer such a grant on behalf of a student, the institution must be fully accredited by one of the regional institutional accrediting commissions recognized by the U.S. Secretary of Education and the Council on Post-Secondary Accreditation.

*Purpose:* To provide support for graduate students to conduct research on critical issues in child abuse and neglect.

*Background Information:* The research community has highlighted the need to draw new researchers into the field of child abuse and neglect. Researchers participating in NCCAN-sponsored research symposia and grantees' meetings as well as in the Hearings on Issues in Research on Child Maltreatment conducted by the Research Committee of the U.S. Advisory Board on Child Abuse and Neglect recommended the granting of stipends at the doctoral level as one of several vehicles to address this need. In response to these recommendations, HDS seeks to expand the research capacity of the field by encouraging more students to seek careers in child abuse and neglect research through the granting of individual graduate fellowships for doctoral candidates to complete their dissertations. The questions to be addressed and issues to be studied for graduate fellowships are those related, but not limited, to the Priority Area on Field Initiated Research for Child Abuse and Neglect.

HDS is interested in supporting doctoral-level candidates, through their sponsoring institutions, who are now conducting or wish to conduct research on child abuse and neglect for their dissertations. Doctoral-level candidates in interdisciplinary programs are encouraged to apply for support through their institutions.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

- Provide evidence of the candidate's ability to conduct research including education, employment experiences, publications, and information on current academic status. A letter of support from a sponsoring faculty member must also be provided.
- Propose one or more research questions to be addressed by the candidate which would contribute to the body of knowledge about child maltreatment.
- Demonstrate the candidate's indepth understanding of the issues and problems associated with child abuse and neglect and provide an up-to-date review of the relevant literature.
- Present specific results from any relevant planning studies, pilot studies or other preparatory work conducted by the candidate.
- Describe the overall research design which would be employed including, as applicable, sampling procedures, experimental design, kinds of data to be collected, procedures for data collection, the instruments and measurements to be utilized, adapted or developed and the plans for data analysis.
- Demonstrate the candidate's ability to gain access to necessary information, data, and clients.
- Provide assurances that the grant would be used to pay a stipend to the candidate; some dependent allowances; any appropriate university fees; and major project costs for conducting the proposed research, including any necessary travel.
- Consider, because of the small amount of these awards, waiving any overhead or indirect costs.
- Provide assurances that the candidate would attend a three-day annual spring meeting in Washington, DC, and would prepare quarterly progress reports and a final project report in a format ensuring its ease for dissemination and utilization.

*Project Duration:* The length of the project must not exceed 12-months.

*Federal Share of the Project Costs:* The maximum Federal share is not to exceed $10,000 for a 12 month project period.

*Matching Requirement:* There is no matching requirement.

*Anticipated Number of Projects to be Funded:* It is anticipated that ten projects will be funded. No more than two awards per institution will be made.

1.36 Field Initiated Research for Child Abuse and Neglect

*Eligible Applicants:* State or local, public or nonprofit agencies, organizations, and institutions of higher learning.

*Purpose:* To support new research designed to carry out the legislative responsibilities established for the National Center on Child Abuse and Neglect by the Child Abuse Prevention and Treatment Act of 1988, as amended. These responsibilities include the conduct of research on the causes, prevention, identification and treatment of child abuse and neglect; and on appropriate and effective investigative, administrative and judicial procedures with respect to cases of child abuse, particularly child sexual abuse.

*Background Information:* There is an ongoing need to generate new knowledge and an understanding of critical issues in the field in order to improve its capacity to prevent, identify and treat child abuse and neglect. Research issues to be addressed are those that will expand the current knowledge base, build on prior research, contribute to practice and provide insights into new approaches to the prevention and treatment of child maltreatment.

Such issues include, but are not limited to, alternative methods for measuring prevalence; recurrence rates and causes of recidivism; child fatalities; the impact of feedback on reporter and Child Protective Services (CPS) system behavior; and parent and child experiences with the CPS system. Additional issues to be addressed include cultural factors in maltreatment and the CPS systems response; identification of neighborhood-level factors related to the etiology, prevention and treatment of child abuse and neglect; factors that promote resilience in maltreated children; collaborative approaches to assessment and treatment for parallel traumas experienced by the child such as parental substance abuse plus maltreatment; prevention of revictimization; effective administrative procedures for the identification, handling and treatment of child abuse cases; transfer of appropriate technology from other fields; and methods for translating and disseminating critical bodies of research for use in practice. The proposed research studies should be designed to address current and emerging issues that have direct application to the field of child abuse and neglect.

Consideration will be given to longitudinal studies that provide for coordination with the NCCAN-sponsored Consortium for Longitudinal Studies of Child Maltreatment which seeks to aggregate compatible projects into a longitudinal study database. It is also expected that longitudinal studies will obtain information on the ability of maltreated children to deal with normative developmental transitions.

The use of common data collection instruments across studies is

encouraged where applicable. It is also expected that initial planning for data sets will take into consideration sound documentation practices and that final reports will be prepared in an NCCAN-suggested format. Information on all projects supported by NCCAN as well as other studies on child maltreatment is available through the Clearinghouse on Child Abuse and Neglect Information, P.O. Box 1182, Washington, DC 20013.

Applications which involve interdisciplinary approaches are encouraged.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

- Describe how the proposed research addresses current and emerging issues that have direct application to the field of child abuse and neglect within the context of the National Center's legislative responsibilities.
- Indicate, if longitudinal studies are to be addressed, willingness to cooperate with the NCCAN-sponsored Consortium for Longitudinal Studies of Child Maltreatment.
- Indicate an indepth understanding of the issues and problems associated with child abuse and neglect and provide an up-to-date review of the relevant literature.
- Develop an approach that is comprehensive and culturally responsive to the populations included in the study.
- Describe the overall research design that would be employed including, as applicable, sampling procedures, experimental design, kinds of data to be collected, procedures for data collection, the instruments and measurements to be utilized, adapted or developed and the plans for data analysis.
- Indicate an ability to gain access to necessary information, data, and clients.
- Describe strategies for the dissemination of the findings in a manner that would be of use to other researchers and practitioners in the field.
- Provide assurances that at least one key staff person would attend a three-day annual spring meeting in Washington, DC; that the data set would be prepared according to sound documentation practices; and that the final report would be prepared in a format ensuring its ease for dissemination and utilization.

*Project Duration:* The length of the project must not exceed 36 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $150,000 for the first 12-month budget period or a maximum of $450,000 for a 3-year project period. Applications for lesser amounts, including those for small grants of $75,000 or less for a 3-year project period, will also be considered under this priority area.

*Matching Requirement:* There is no matching requirement.

*Anticipated Number of Projects to be Funded:* It is anticipated that three projects will be funded at the maximum funding level; more than three projects may be funded depending on the number of applications for lesser amounts.

*2. Administration for Native Americans*

2.01 Stabilizing Markets for Indian Manufacturing Companies

*Eligible Applicants:* American Indian Tribes, for-profit Native American organizations and nonprofit Native American organizations or tribal consortia.

*Purpose:* To develop and implement a multi-tribal manufactured products marketing service to assist American Indian manufacturing companies in marketing their products to all sectors of the U.S. or international economy.

*Background Information:* In recent years, Indian Tribes have identified unemployment as their number one problem. To address this problem, several large Indian manufacturing businesses (employing or having the potential to employ 50 or more employees) have been established at considerable Federal and tribal government expense.

Federal agencies are concerned about the growth and stability of these businesses because of their potential for impacting Indian unemployment rates. On most reservations unemployment ranges from 40 to 90 percent of the population. It has been projected that on larger reservations as many as 125 manufacturing businesses, employing large numbers of people, would be needed to create enough jobs to substantially reduce unemployment.

When these tribal manufacturing companies were formed, they were intended to be profitable on a long-term basis at a level at least equal to their direct competition. Their problem, however, is that in the beginning they were undercapitalized or debt financed and were placed in a non-competitive subsidized "8(a)" status. Now these businesses are approaching their "graduation" from the section 8(a) process and are expected to be able to compete on the open market. Because of their tight financial structuring, the existing businesses will not be able to compete in this new market without assistance.

The long-term success of the Indian manufacturers requires the movement from marketing to government agencies such as the Defense Department to other Federal, State and/or local government agencies, and to the commercial or private sector markets. Defense Department advisors commonly tell businesses not to rely too heavily on Defense markets because they rise and fall with Congressional appropriations. Although expectations that Defense appropriations will be drastically reduced during the next few years may have been moderated by the current crisis in the Middle East, presumptively in the long-run the relative expenditures on Defense will decline.

To broaden the scope of the market for American Indian manufacturers' products, the proposed marketing effort should emphasize transitional strategies to reduce dependency on Defense expenditures and encourage steady markets in the non-defense related public sector. Concurrently, emphasis should also be placed on strategies to develop private sector markets.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

- Indicate how the project will utilize the services of manufacturing market representatives and existing marketing/advertising agencies to promote sales of the participating tribally owned manufacturing companies.
- Indicate how sales, advertising, and marketing techniques will be adopted to meet the needs and circumstances of specific tribal manufacturing companies represented in relation to the Federal, State and local government contracting processes and the private sector market.
- Indicate how the project will ensure that sales will be achieved for the various tribal companies represented by the applicant.
- Demonstrate a knowledge of Indian economic development and the various preferential opportunities available to Indian businesses.

Projects under this priority area are designed to provide direct sales support for tribally owned manufacturing companies and Indian-owned manufacturing companies located on reservations, to advertise products, locate buyers, arrange and consummate sales, facilitate delivery of products and provide follow-up services for participating companies. They are not intended to finance trade shows or technical assistance efforts.

Applicants may want to consider a working arrangement with an existing marketing/advertising agency with a

proven record in government and/or commercial marketing.

*Project Duration:* The length of the project must not exceed 36 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $250,000 for the first 12-month budget period or a maximum of $750,000 for a 3-year project period.

*Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $750,000 is $187,500 for a 3-year project period. This constitutes 20 percent of the total project budget. (This non-Federal share match of 20% applies only to ANA priority areas.)

*Anticipated Number of Projects to be Funded:* It is anticipated that one project will be funded.

2.02 Environmental Protection

*Eligible Applicants:* Tribal Consortia, Alaskan Native Consortia and Native American nonprofit organizations.

*Purpose:* To develop action-oriented approaches addressing the broad range of environmental issues facing the Native American community, resulting in effective solutions to environmental problems.

*Background:* Indian Tribes and communities are increasingly facing the problem of environmental degradation. As communities develop more economic ventures, the problems associated with growth, and particularly industrialization, will worsen. All the environmental stresses confronting more developed nations have already had a serious impact on Native American communities. The problems these communities face are multiple: toxic wastes, destruction of natural habitat, reductions in air and water quality, diminution of watersheds, lack of safe, long term waste disposal and sewer treatment facilities, and the adverse impact on tourism resulting from an increasingly blighted landscape.

These environmental problems carry an enormous economic and social cost. Measurable increases in health problems, particularly for at-risk populations such as children and pregnant women are already occurring. The increased cost and complexity of community infrastructures to cope with environmental problems is a growing component of the budgets of these communities. In an economy in which tourism will play an increasing role as a source of jobs and revenue, the attractiveness of a community's environment will directly translate into economic health.

Tribal governments face particular problems in identifying, correcting and preventing environmental problems because of their very limited financial resources, small tax base, and physical and social isolation from other communities. Reservations are extremely vulnerable to problems created outside of tribal control, such as pollution of tribal fishing streams and dumping or burning of garbage by closeby towns.

It would be prohibitively expensive for each Tribe to address its environmental problems without building on understandings gained nationally. Therefore, it is particularly crucial that Native American communities have access to expert knowledge and demonstrated techniques for solving their problems. At the same time, the local communities possess the practical understanding of the issues and constraints on action, and offer intellectual and political resources that are indispensable for solving these problems on a comprehensive scale.

This priority area focuses on funding projects that will incorporate effective, practical resolutions to environmental problems in Native American communities. The successful approaches will be characterized by a philosophy of "think globally, act locally," and must reflect the unique realities of the government-to-government relationship. This approach should stress local involvement and decisionmaking, and strive for maximum support from the private sector. Because reservations are victimized by outside environmental practices, stress should be placed on expanding tribal influence in the decisions of other local governments. It will combine a "think tank" to do the strategic planning and analyses necessary for a fundamental attack on the problem, with near-term implementation of at least two specific model projects which can be made available to Indian country.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the applicant organization should:

- Create a solution-oriented expert advisory group to identify and address the environmental issues in a Native American context. The group will function as a National "think tank," engaging in strategic planning, technical analysis and policy setting. The group should include appropriate technical experts and tribal policy makers. The group, or a component of it, will also provide guidance to the specific projects.
- Provide for the implementation of at least two model projects on two separate sites, addressing current environmental problems in local communities.
- Establish a clearinghouse mechanism to exchange and disseminate understandings of common problems, successful solutions and model programs, and elimination of barriers to successful local solutions to environmental problems. The clearinghouse should focus on areas that differentially effect Tribes, and which are not adequately addressed by existing sources of information such as the Environmental Protection Agency; Department of Energy; Department of Housing and Urban Development; Indian Health Service; and Department of Interior.
- Create model linkages with non-Indian units of government to provide greater Native American input in local practices impacting on reservations.
- Develop mechanisms to provide for funding support from local governments or private industries which have contributed to the environmental problems in reservation areas or may benefit from environmental improvements.
- Consider mechanisms for continued funding of the expert advisory group, including creation of a for-profit subsidiary to advise Tribes, the Federal Government and the private sector on problems and opportunities in the environmental area.

*Project Duration:* The length of the project must not exceed 36 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $250,000 for the first 12-month budget period or a maximum of $750,000 for a 3-year project period.

*Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $750,000 is $187,500 for a 3-year project period. This constitutes 20 percent of the total project budget. (This non-Federal share match of 20% applies only to ANA priority areas.)

*Anticipated Number of Projects to be Funded:* It is anticipated that one project will be funded.

2.03 Developing A Model For Native American Veterans to Access Services

*Eligible Applicants:* Nonprofit Native American organizations including urban Indian centers, American Indian Tribal Coalitions, Alaska Native Coalitions and Native Hawaiian organizations. Eligible applicants also include public and nonprofit private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands. (The populations served in this latter group may be located on these islands or in the United States.)

*Purpose:* To develop and test an effective comprehensive service delivery model for Native Americans which provides access to services and benefits to which they are entitled.

*Background Information:* Veterans make up about 12% of the Native American population. Although the exact number varies depending on definition, a fairly consistent profile of this group can be established. Every study points to two major conclusions: (1) Native American veterans disproportionately confront a constellation of social and economic problems; and, (2) traditional programs designed to help veterans are not adequately meeting the needs of the Native American population.

The 1985 Veterans Administration Statistical Brief identifies a population of 159,900 American Indian, Aleut and Eskimo veterans. Hearings held in November 1989 by the Select Committee on Indian Affairs indicate that there are 170,000 Native American veterans.

The Native American population, as a whole, experiences more poverty and social ills, including the highest unemployment rates, poorer health and lower educational levels than any other group in American. Native Hawaiian and Native American Pacific Islander veterans also suffer from these problems and are under-represented in the receipt of services.

Two major problems related to the Department of Veterans Affairs (VA) services to Native American veterans were identified in the final report of the Advisory Committee on Native American Veterans (required by Pub. L. 99–272). These are a lack of statistical data and the underutilization of veterans benefits and health care.

Because of the gross level of unmet needs among Native American veterans, there is a need to develop and establish an effective mechanism/model for identifying and accessing the full range of services and benefits for which they are eligible. The identification and implementation of such a model should help social self–sufficiency and sustained improvement in the conditions of Native American veterans.

This priority area directly supports several HDS initiatives, such as strengthening the family's capability to care for its members and the integration of services to improve the effectiveness and efficiency of social service delivery. In addition, this area emphasizes the Departmental initiatives to improve access to health care and enhancing health promotion.

The model developed under this priority area should, when implemented, increase the availability and accessibility of existing Government services, including VA benefits, to which Native American veterans are entitled. Additionally, benefits and services should be targeted to those with physical disabilities and service-related mental and emotional impairments. It is aimed at eliminating the problem of inaccessible, fragmented and uncoordinated services experienced by veterans at all levels of tribal, State and Federal governments.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the proposed project should include the following:

- Present a service delivery model which is comprehensive; including, at a minimum, health, job training and social services, and describe related issues such as outreach and referral, rural transportation to access services and culturally appropriate support systems such as traditional healing practices. Use of media also should be included in the project.
- Include a plan for pilot testing the model at two sites, and present an appropriate and realistic assessment for determining its effectiveness and suitability for replication elsewhere in the Native American community.
- Describe the communities in which the program will be tested. Describe their populations, including ages, income and other relevant demographic information;
- Include provisions for effective coordination of all appropriate services and efforts on behalf of Native American veterans, including strong interface with tribal government agencies, social service offices of VA medical centers and other tribal, local and/or State service agencies. Assurances to this effect should be provided by these organizations.
- Provide for consultation with the Native American veterans community to solicit input concerning the model, how it should be implemented and possible site locations.

*Project Duration:* The length of the project must not exceed 24 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $200,000 for the first 12-month budget period or a maximum of $400,000 for a 2-year project period.

*Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $400,000 is $100,000 for a 2-year project period. This constitutes 20 percent of the total project budget. (This non-Federal share match of 20% applies only to ANA priority areas.)

*Anticipated Number of Projects to be Funded:* It is anticipated that one project will be funded.

2.04 Developing An Holistic Native American Community Model to Combat Substance Abuse

*Eligible Applicants:* American Indian Tribes, Alaskan Native Villages and consortia thereof; for-profit and nonprofit Native American organizations and Native American institutions for higher education.

*Purpose:* To expand the current range of culturally sensitive models through which substance abuse within Native American communities is addressed. The proposed model must incorporate holistic approaches to preventing and abating substance abuse through the integration of the ethos of the specific Native American group with demonstrably effective techniques for preventing and abating substance abuse. The model must incorporate traditional family structure and specify participation of Elders, youth and relevant organizations in assisting the evolution of community efforts to eliminate substance abuse.

*Background Information:* Widespread problems arising from chemical dependency are evident within Native American life; in fact, disruption of Native American family life is often associated with alcohol-related or other drug abuse. General human services agencies frequently do not provide either adequate or culturally-sensitive support to such families in need. Available evidence indicates that normative approaches to these problems which do not take into account the special sensitivities associated with Native American experiences often fail to reach families with problems.

The impact of substance abuse within Native American communities is exacerbated by the private nature of the Native American culture, the isolation of many of the communities, and the constrained economic conditions and accompanying poor housing and transportation structures within these communities.

Indicators of well-being among Native Americans show that within these communities the incidence of mortality arising from causes such as liver disease and automobile accidents, which are frequently associated with chemical abusers, is two to three times more frequent than within the U.S. population as a whole.

Preventing chemical abuse has been a concern for ANA for many years. The following are titles and grantees of drug and alcohol abuse projects that ANA

funded in fiscal years 1987 through 1989. Abstracts of these projects are available by calling (202) 755–4633.

"Project S.T.A.R. (Support, Training, Awareness, Resources)" by Oglala Lakota College;

• "Traditional Healing Project for Alcohol and Substance Abuse for Native Americans" by the Kodiak Area Native Association;

• "Circle of Victories" by the Native Images Foundation, Inc.;

• "Indian Children's Alcohol/Drug Abuse Prevention Project" by the Seattle Indian Health Board;

• "Ft. McDowell Indian Community Alcohol and Drug Abuse Prevention Project" by the Ft. McDowell Moh-Apa Indian Commission;

• "C–SACAI: Communities Using Science-Based Alcohol Curriculum for American Indians" by the American Indian Science and Engineering Society;

• "Grand Traverse Band Substance Abuse Prevention Project Big Brother/Big Sister Program" by the Grand Traverse Band of Ottawa-Chippewa Indians;

• "Alcohol and Substance Abuse Prevention for Youths" by the Red Cliff Band Chippewa Indians;

• "Resolving Substance Abuse Among Native American Adolescents" by Rhode Island Indian Council;

• "A Project for Resolving Chemical Dependency Problems of Native Americans Within an Urban Environment" by the Denver Indian Health Board;

• "Resolving Chemical Dependency Through Development of a Community Code Containing Principles of Proper Living Metaphoric Teaching/Learning Experience in an Indian Community" by the Sokaogan Chippewa Community;

• "Community Development Process Training" by the Native Village of Fort Yukon;

• "Prevention of Chemical Abuse Among Native American Youth and Families" by the Native American Manpower Program; and

• "The Benefits of Intervention and Treatment: Towards a Typology of Recovery Among Native American Alcoholics and Drug Abusers in the Urban Indian Community of Spokane, Washington" by the Spokane Urban Indian Health Service.

The Administration for Native Americans is interested in substantiating the value of a model which shows how to adapt known techniques for resolving family conflicts related to chemical dependency using the indigenous values and structure of the Native American community to promote substantial movement towards chemical-free family and community environments

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

• Propose a project which builds upon the prior state-of-the-art in this field and includes the specific traditional Native American values;

• Describe the community in which the program will operate. Describe the population, including ages, income and other relevant demographic information;

• Demonstrate community-based support for the proposed project; include letters of commitment from the participating organizations detailing their support;

• Describe the specific roles to be played by Elders, youth and relevant organizations in developing and implementing the project;

• Include a description of how the project's achievements will be assessed both during and subsequent to the project's completion; and

• Propose techniques through which the results of the project will be disseminated to other Native American communities.

*Project Duration:* The length of the project must not exceed 36 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $200,000 for the first 12-month budget period or a maximum of $600,000 for a 3-year project period.

*Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $600,000 is $150,000 for a 3-year project period. This constitutes 20 percent of the total project budget. (This non-Federal share match of 20% applies only to ANA priority areas.)

*Anticipated Number of Projects to be Funded:* It is anticipated that one project will be funded.

*3. Office of Policy, Planning and Legislation*

3.01 Community Coalitions to Plan for Change

*Eligible Applicants:* Local public or private nonprofit agencies or organizations or local government entities acting on behalf of a new or existing community coalition. The coalition must consist of at least five community agencies or organizations, including a minimum of one local governmental entity having jurisdiction over the target community such as a city, county, or regional government. The coalition may, and is encouraged to, include the participation of churches, community foundations, universities, businesses and other for-profit organizations, and ethnic and neighborhood associations.

*Purpose:* To develop a plan of action that addresses a pressing need in the community related to HDS programs and initiatives, and, based on the process of developing this plan of action, to establish a permanent community infrastructure and consensus-building process through which the community will implement that plan and will build capacity for addressing future problems.

The plan developed by the coalition should be comprehensive, coordinated, and community-based—focusing on one or more problems facing families in that particular community. The coalition should function as a planning and coordinating entity, energizing and mobilizing community organizations, individuals and institutions to seek creative solutions to perceived local needs and problems. HDS is particularly interested in funding communities in which a process of planning and coalition building has not been used extensively, or is in need of strengthening and expansion.

*Background Information:* The complex problems facing communities today call for approaches that recognize that there are no easy or simple solutions. These problems are interrelated, cut across agency and institutional boundaries, defy categorical funding streams, and impact all sectors of society. For example, problem areas include infant mortality, child abuse/neglect, pregnancy among teenagers, school dropout rates and chronic truancy, unemployment, drug and alcohol abuse, and violent crime. In addition to the human misery resulting from these problems, the social and economic costs to communities and the Nation are enormous.

It is increasingly apparent that it is primarily at the local community level that solutions are best formulated and implemented. At this level, with the involvement of active and value generating community institutions and organizations, religious and community leaders, and elected officials, we can generate the commitment, skills, and opportunities to make changes in our communities.

At the heart of our communities are the shared values and standards which are generated and sustained by families and other indigenous institutions, and which establish an identity for the community. Those programs that have been most successful in addressing community problems have been built with the participation of such

community groups, often called "mediating structures." (Mediating structures are families, neighborhood organizations, ethnic and religious associations, and voluntary associations such as the YMCA/YWCA and Boy Scouts/Girl Scouts.) Because the failure of values is such an important component of many of our pressing social problems, the restoration and strengthening of values will be a critical part of the solution.

With the gradual disintegration of the two parent family, the multigenerational family, and other "traditional" social structures in this country, government programs have attempted to cope with social problems that previously had been the responsibility of other social institutions. However, government programs alone cannot begin to provide the resources and expertise necessary to resolve these problems. Families and communities still remain the best problem-solvers, in part because they not only provide resources but also communicate the basic values that our children and youth need to survive and prosper.

Such positive values need to be reinforced again and again in our children and youth by families, neighbors, religious organizations and schools. In order for families to be self-sufficient and for children to flourish, the family must be supported by the social institutions of the community, including churches, schools, community agencies, businesses, and the government. Above all, families and individuals need to be involved in identifying the problem and developing solutions satisfactory to the local community.

Rebuilding the spirit and influence of the family and community is thus central to resolving our country's most pressing problems. Coalitions that come together to mobilize public participation, to identify problems (single or multiple issues, broadly defined or narrowly focused), to address and develop plans utilizing existing talents and resources, and to successfully implement such plans not only bring about change, but they also strengthen the capacity of the community to work together for further change.

HDS, in collaboration with the Kettering Foundation, may make special technical assistance available to projects receiving grant awards under this priority area. In addition, grantees are expected to cooperate in any data collection and evaluation efforts that may be initiated by HDS.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

- Describe the composition of the coalition and identify the lead organization; describe whether this is an ongoing coalition or is just being formed. The coalition must consist of at least five community organizations or agencies, including a minimum of one local government entity having jurisdiction over the target community, such as a city, county or regional government.
- Describe the community where the coalition is located. Describe the population (demographic information, including ages, income, ethnic and racial composition) and the municipal entity or entities having jurisdiction.
- Specify the problem that the community coalition intends to address through this comprehensive planning effort. Provide evidence of community need, community involvement in identifying the issue, including a review of the literature, community studies, survey data, and other related information, and community activities.
- Specify the project goals and desired objectives/outcomes, as well as appropriate indicators intended to verify and measure the achievement of the outcomes at each level—the coalition, the planning process, the plan, and its future implementation.
- Describe the methods to be used to ensure effective involvement by interested individuals and relevant organizations in the identification of fundamental beliefs and values of the community, definition of the problem to be addressed, issues and alternative solutions, and the development of the plan of action.
- Describe plans for the continuation of the community coalition as an effective permanent consensus-building process and its role in the implementation of the plan beyond the project period.
- Describe the lead organization's experience, as well as that of the other coalition organizations, in community leadership and problem resolution. Describe the participating organizations' innovative program components, and any prior involvement in community decisionmaking that would provide evidence of the coalition's ability to follow through on this major planning effort. Provide assurance that the coalition will produce a viable and realistic plan of action at the end of the project which enjoys broad community support.
- Include letters of commitment from the participating organizations, detailing their support for the applicant to act on behalf of the coalition and their potential role in the planning effort. The letters should detail the types of commitment that each coalition participant is making.
- Describe how the project funds will be expended. Provide budget detail on each line item and major expense in relation to the proposed goals, objectives and primary functions of the project. Include a line item for participation in cluster group meetings held in Washington, DC. All grantees will be expected to meet twice a year to exchange information about their coalition effort. In addition, the coalition may want to budget for a facilitator to assist in the coalition's development.
- Provide an assurance that these grant funds, including both Federal share and matching funds, will not be used for service provision.

*Project Duration:* The length of the project must not exceed 24 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $100,000 for the first 12-month budget period or a maximum of $200,000 for a two-year project period. The grant funds, including both Federal share and matching funds, may not be used for service provision.

*Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $200,000 is $66,667 for a two-year period. This constitutes 25 percent of the total project budget.

*Anticipated Number of Projects to be Funded:* It is anticipated that three to four projects will be funded. Grant awards will be made which reflect the diverse nature and needs of today's local communities to a variety of coalitions focusing on a range of issues.

3.02 Correctional Facilities as an Intervention Point with Drug-Addicted Pregnant Women

*Eligible Applicants:* State, city and county correctional facilities that serve women.

*Purpose:* To utilize incarceration as an intervention point in providing substance abuse education, public health nursing and child welfare case planning for drug-addicted pregnant women to improve the outcomes for these high-risk women and their babies. This would involve the replication of the ADAPT program (described below) or the demonstration of a similar comprehensive program which begins in the correctional facility and continues when the individual returns to the community.

*Background Information:* Many female drug addicts rely on prostitution or theft for their income. In addition,

drug use itself is illegal and carries a mandatory minimum sentence. For these reasons, more drug-using women are served by the criminal justice system than any other government system. This point of intervention can be extremely useful in locating a population of drug-abusing pregnant women who might not be identified in any other setting.

There has been a marked increase in the number of women serving time in correctional facilities. In 1980 there were about 13,000 women in Federal and State prisons. By the end of 1989, that number had increased to almost 41,000. In 1989 alone the female prison population grew by 25 percent, compared to a 13 percent growth in the male population. According to the Federal Bureau of Prisons, about 60 percent of the women in Federal custody are serving sentences for drug offenses. Further, current estimates by the General Accounting Office state that between 70 and 80 percent of the women in prisons have alcohol and drug dependency problems. Most of these women are young, between the ages of 20 and 34 years old, in their child-bearing years.

Many women in the criminal justice system have up to ten year histories of substance abuse. Often the only health care they receive is in jail. An informal evaluation of women receiving health care in the Multnomah County, Oregon jail showed that about 50% of the women received no health care in the community outside of the corrections health facility. While most of the pregnant women were eligible for Title XIX medical benefits, many do not follow through with application procedures.

The time in a corrections facility can provide pregnant addicts with time away from drugs, alcohol, and the self-destructive drug-seeking lifestyle. It is critical that the corrections facility have a drug testing and drug free policy to insure that the time spent there does not further encourage the mothers' addiction. However, the most important point of the program is services for the mother after leaving prison. The average stay in a corrections facility is much shorter than the duration of a pregnancy, and in 1988, almost 75 percent of the convicted women serving under correctional supervision were on probation or parole. The demonstration should include continued drug testing, pregnancy testing, health care, child welfare case management and drug treatment for these pregnant women as they return to the community.

This priority area is modeled after the successful ADAPT Program in Multnomah County, Oregon. In this program, women entering jail are screened for pregnancy and drug use. Prenatal care is provided by nurse practitioners and physicians in the jail. While women are in the jail, they participate in a weekly one and one half hour educational substance abuse group. Women are also visited by a Community Health Nurse and a case manager to begin developing release plans.

When women leave the correctional facility, the Community Health Nurse and case manager provide home visits and link women with services they require in the community. Women receive prenatal care at one of the Multnomah County Health Clinics located around the county or at one of the local hospital outpatient clinics. Women are enrolled in substance abuse treatment programs at which child care is provided.

For more information on this priority area, contact Margaret Baker, Office of Policy, Planning and Legislation, Office of Human Development Services, 200 Independence Avenue, Room 312 F, Washington, DC 20201 (telephone 202/245-7027).

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

- Provide a demographic profile of the service area, the scope of the problem to be addressed, including the numbers of women to be served while incarcerated and while in the community;
- Define the goals and objectives of the proposed program, giving specific numbers of expected participants;
- Describe the health services, social services, drug treatment services and drug testing components of the program, both while the women are in prison and while in the community, as well as other components of a comprehensive program;
- Provide letters of commitment from the participating service providers in the community which indicate the extent of involvement in the proposed project;
- Provide for continuation of the program once Federal funding has ended; and
- Provide for an evaluation component that will track the women through their pregnancy.

*Project Duration:* The length of the project must not exceed 36 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $125,000 for the first 12-month budget period or a maximum of $375,000 for a three-year project period.

*Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $375,000 is $125,000 for a 3-year project period. This constitutes 25 percent of the total project budget.

*Anticipated Number of Projects to be Funded:* It is anticipated that three projects will be funded.

3.03 Transfer of International Innovations

*Eligible applicants:* There are no eligibility restrictions for applications in this priority area. Any public or private organization capable of carrying out the purposes of this priority area may apply. Applicants in other countries are eligible to apply.

*Purpose:* To improve the quality, accessibility and accountability of social service programs in the United States by transferring to this country innovations in other countries involving community-based solutions to meet the social service needs of persons at risk.

*Background Information:* While the United States is a natural field for research and demonstration in the area of social services, we can gain considerable insight from other countries through a knowledge of their social service programs, authorizations, governance, and delivery systems. Transferring these innovations can lead to an enhancement of, or adaptations to, our domestic social service activities.

In furtherance of the HHS Secretary's Eastern European Initiative, applications that propose cooperation with social service organizations in the "emerging democracies" of Eastern Europe are encouraged. This is not meant to exclude applications that propose cooperation with social service organizations in other parts of the world, but aims to focus the attention of some of the applications to this geographic area of interest.

The "Transfer of International Innovations" priority area description included in the FY 1990 CDP announcement listed the titles of and the grantees for the 13 projects that had been funded under this priority area in previous years. The subjects of these projects are:

- Income generating projects for the elderly;
- Increasing self-sufficiency and self-esteem in old age through employment;
- Home care for the elderly;
- Innovative social service techniques for working with the Latino family;
- Application of innovative techniques to study and improve the quality of care in domiciliary care facilities;
- An international exchange of services and training to improve the learning and living environment of

children in underprivileged communities;

- Reducing violence toward children;
- Job placement for low-income unemployed youth;
- Community-based and in-home services for frail and economically disadvantaged elderly;
- Home-based intervention for low-income minority preschool children and mothers;
- Community self-help associations: mediating structures for volunteers/professionals;
- Opening technology to the developmentally disabled; and
- Exchange of technology regarding spina bifida.

As a result of the FY 1990 HDS CDP competitive process, an additional four projects were funded. The titles of and grantees for these projects are:

- "Comparative Analysis of Decentralization of Services in Three Scandinavian Countries" by the Human Services Research Institute, Cambridge, Massachusetts;
- "Working Capital" by the Institute for Cooperative Community Development, Manchester, New Hampshire;
- "Enhancing Family Preservation Through International Innovations Transfer" by the National Association of Social Workers, Silver Spring, Maryland; and
- "Developmental Disabilities and Concomitant Severe Behavioral and Psychiatric Disorders: An International Demonstration, Technology Transfer, and Research Project Between Israel and the United States" by the University of Rochester, Rochester, New York.

*Minimum Requirements for Project Design:* In order to successfully compete under this priority area, the application should:

- Have the promise of contributing significantly to the achievement of one or more of the major HDS goals and be of benefit to one or more of the HDS target groups—Native Americans, the socially and economically needy, the elderly, the developmentally disabled, and at-risk children, youth, and families.
- Describe community-based solution(s) to the social service needs of populations in other nations which will be tried and tested in a U.S. setting.
- Identify the target U.S. communities and settings in which the new service approaches would be tested.
- Specify the proposed methods to be used to promote systems changes in the target U.S. communities and how the individual organizations will be involved.
- Be relevant to domestic research with the possibility of complementing ongoing or new projects in the United States.
- Relate to the U.S. commitment to participation in international organizations, both governmental and nongovernmental, and to United Nations (UN)-sponsored events, such as the UN World Summit for Children, International Youth Year, International Year of the Family—1994, and follow-up to the World Assembly on Aging, and the UN Decade of Disabled Persons.
- Include an adequate mechanism to allow for wide dissemination and replication of project findings.
- Indicate a focus either in the United States or shared with the transferring country. The focus cannot be exclusively in another country. The application must include a U.S. component and a U.S. co-project director.

*Project Duration:* The length of the project must not exceed 36 months.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $100,000 for the first 12-month budget period or a maximum of $300,000 for a 3-year project period.

Neither Federal funds nor the non-Federal match (cost-sharing) can be used for expenditures related to international travel. However, applicants may use other sources of funds available to them for this purpose.

*Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $300,000 is $100,000 for a 3-year project period. This constitutes 25 percent of the total project budget.

*Anticipated Number of Projects to be Funded:* It is anticipated that three projects will be funded.

3.04 Public Information/Community Awareness Activities for the Prevention of Family Violence

*Eligible Applicants:* State agencies which are the recipients of HDS family violence prevention grants in collaboration with other State and local public and private nonprofit agencies, institutions, and community organizations, that have designed and implemented information activities and community awareness strategies.

*Purpose:* To assist in the development of public information and educational strategies and activities that will serve as a model for the prevention of family violence and provide information on resources, facilities, and alternatives to family violence victims and their dependents, community organizations, local school districts, and individuals seeking assistance.

*Background:* Current surveys and research studies have indicated that, all too often within families, the response to stressful situations tends to be physically or emotionally violent. There are data which substantiate the inference that the violent response to conflicts or stressful situations may be a "learned" response, an adaptive and modeled behavior used to control or extricate a person from a particularly stressful situation.

It also has been shown, particularly in anecdotal reports, that there are victims of family violence still unaware of sources of assistance that may be available in their communities. Victims and batterers alike have indicated that they remained in their situations or felt powerless to change because they were uninformed of their options or of the community resources that may have assisted them. We also may assume that the so-called "new minorities" (e.g., Southeast Asians, Central Americans) may have both language and cultural barriers to surmount in sorting out the matrix of services and community mores in dealing with family violence. Moreover, the African American and Hispanic communities often have complained that, in general, they do not receive the most current or accurate information on available services or facilities.

The goal of this priority area is to address the reality of the "learned" response in a limited manner by adding the element of credible and persuasive information to the arsenal of weapons to break the so-called "cycle of family violence." By providing for and assuring that individuals, particularly within the minority communities, are aware of and have information about available resources and alternative responses to the prevention of violence, we also may demonstrate an intervention model that provides for a more informed individual and a prevention strategy responsive to aggressive and stressful situations.

The dual focus of this priority area requires the development of an innovative informational model that may be used by public and private agencies, schools, churches, boys and girls clubs, community organizations, and individuals. Increasing the amount of information on services and other alternatives to prevent family violence provides the victims, their dependents, and perpetrators, with the knowledge that assistance is available.

Accurate information is critical to any community awareness strategy and activity. How it is communicated must be modified where there may be communication barriers because of perceived or real lanquage differences and cultural insensitivities. Several

organizations recently have developed information strategies and activities to inform and involve various minority communities. Prospective applicants may want to contact the following organizations through their staff liaison persons to discuss the issues they faced, the methods proposed to actively engage their communities, and what they would identify as the most critical elements in their informational strategies:

Three Feathers Associates, P.O. Box 5508, Norman, Oklahoma 73070, (405) 360–2929, Antonio Dobrec, Project Director

Lao Family Community of Fresno, 3121 E. Olive, Fresno, California 93702, (209) 264–4080, Tony Vang, Executive Director

Washington State Migrant Council, 1115 South 9th, Sunnyside, Washington 98944, (509) 837–8909, Cristobal Gonzalez, Special Services Coordinator

Department of Social Work-Sociology, 3500 John Merritt Boulevard, P.O. Box 730, Nashville, Tennessee 37209–1561, (615) 320–3645, Peggy Enochs, Project Director

Northwest Indian Child Welfare Institute, Northwest Indian Child Welfare Association, c/o RRI, P.O. Box 751, Portland, Oregon 97027, (503) 464–3038, Terry L. Cross, Director

*Minimum Requirements for Project Design:* In order to successfully compete under the priority area, the applicant should:

- Present a plan which clearly reflects the participation of the State agency receiving funds under the Family Violence Prevention and Services Act in collaboration with other eligible organizations in the development of this model demonstration.
- Describe, as an element of the plan, an approach to the prevention of family violence, presented, for example, as alternate ways in which children in primary schools learn to handle conflict and disagreements.
- Include, as a critical element in the model, the development and use of non-traditional sources as information providers or vendors. Applicants should present specific plans for the use of local organizations, businesses and individuals, in the distribution of informational materials.
- Include a description of how the results of this model will be measured, provide a set of obtainable objectives, and provide descriptions of long-range family violence prevention plans that would place emphasis on "breaking the cycle" of family violence. Show how the use of a long-term informational strategy, with its emphasis on children and youth, would assist in breaking the "cycle of violence."

*Project Duration:* The length of the project should not exceed 12 months.

*Federal Share of the Project:* The maximum Federal share is not to exceed $50,000 for the 1-year project period.

*Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $50,000 is $16,667 for a 1-year project period. This constitutes 25% of the total project budget.

*Anticipated Number of Projects to be Funded:* It is anticipated that two projects will be funded.

**Part III—Instructions for the Development and Submission of Applications**

This Part contains information and instructions for submitting applications in response to this announcement. Application forms are provided along with a checklist for assembling an application package. Please copy and use these forms in submitting an application.

Potential applicants should read this section carefully in conjunction with the information contained within the specific priority area under which the application is to be submitted. The priority area descriptions are in part II.

*A. Required Notification of the State Single Point of Contact*

All applications to the following CFDA numbers/programs are required to follow the E.O. 12372 process (refer to part I.D. of this announcement, "Statutory Authorities", for the priority areas corresponding to the CFDA number):

93.550 Transitional Living Program for Homeless Youth
93.551 Abandoned Infants Assistance Program
93.600 Head Start
93.623 Runaway and Homeless Youth
93.656 Temporary Child Care for Children with Disabilities and Crisis Nurseries
93.670 Child Abuse and Neglect
93.671 Family Violence Prevention and Services

All States and territories, except Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Virginia, American Samoa and Palau, have elected to participate in the Executive Order process and have established SPOCs. Applicants from these areas need take no action regarding E.O. 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 22372.

It is imperative that the applicant submit all required materials to the Single Point of Contact (SPOC) and indicate the date of this submittal (or date SPOC was contacted, if no submittal is required) on the SF 424, item 16a. *SPOCs will be notified of any applicant not indicating SPOC contact on the application, when SPOC contact is required.* SPOCs have sixty (60) days starting from the application deadline to comment on applications for financial assistance under this program. Comments are, therefore, due from the SPOC no later than July 17, 1991.

These comments are reviewed as part of the award process. Failure to notify the SPOC can result in a delay in grant award. This process of notifying the State Single Point of Contact is required when a program is covered under Executive Order (E.O.) 12372 "Intergovernmental Review of Federal Programs" and 45 CFR Part 100 "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. Therefore, the applicant should contact his or her SPOC directly to determine what materials, if any, the SPOC requires. Contact information for each State's SPOC is found at the end of this Part.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule. It is helpful in tracking SPOC comments if the SPOC will clearly indicate the applicant organization as it appears on the application SF 424. When comments are submitted directly to HDS, they should be addressed to the application mailing address located in part I of this announcement.

*B. Deadline for Submittal of Applications*

The closing date for submittal of applications under this program announcement is May 20, 1991. Applications must be either postmarked or hand-delivered no later than May 20, 1991 to the address indicated in Part I of this announcement.

Hand-delivered applications will be accepted Monday through Friday prior to and on May 20, 1991 during the working hours of 9 a.m. to 5:30 p.m. in the lobby of the Hubert H. Humphrey building located at 200 Independence Avenue, SW., in Washington, DC. When

hand-delivering an application prior to the May 20, 1991 deadline, call (202) 755–4560 from the lobby for pick up. A staff person will be available to receive applications.

An application will be considered as meeting the deadline if it is either:

1. Received at, or hand-delivered to, the mailing address on or before May 20, 1991 or,

2. Postmarked before midnight of the deadline date, May 20, 1991, and received in time to be considered during the competitive review process (within four weeks of the deadline date).

When mailing proposal packages, *applicants are strongly advised to obtain a legibly dated receipt* from a commercial carrier (such as UPS, Federal Express, etc.) or from the U.S. Postal Service as proof of mailing by the deadline date. If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline date. When proof is not provided, an application will not be considered for funding. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the May 20, 1991 deadline are considered late applications and will not be considered or reviewed in the current competition. HDS will send a letter to this effect to each late applicant.

HDS reserves the right to extend the deadline for all applicants due to acts of God, such as floods, hurricanes or earthquakes; if there is widespread disruption of the mail; or if HDS determines a deadline extension to be in the best interest of the Government. However, HDS will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

*C. Instructions for Preparing the Application and Completing Application Forms*

The SF 424, SF 424A, SF 424B and certifications have been reprinted for your convenience in preparing the application. You should reproduce single-sided copies of these forms from the reprinted forms in the announcement, typing your information onto the copies. Please do not use forms directly from the **Federal Register** announcement, as they are printed on both sides of the page.

In order to assist applicants in correctly completing the SF 424, and SF 424A, a sample of completed forms has been included at the end of part III of this announcement. This sample is to be used only as a guide for submitting your application.

Where specific information is not required under this program, N/A (not applicable) has been preprinted on the form.

*Please prepare your application in accordance with the following instructions:*

*1. SF 424 Page 1. Application Cover Sheet*

Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

*Top of Page.* Enter the single priority area number under which the application is being submitted. An application should be submitted under only one priority area.

*Item 1.* "Type of Submission"—Preprinted on the form.

*Item 2.* "Date Submitted" and "Applicant Identifier"—Date application is submitted to HDS and applicant's own internal control number, if applicable.

*Item 3.* "Date Received By State"—State use only (if applicable).

*Item 4.* "Date Received by Federal Agency"—Leave blank.

*Item 5.* "Applicant Information" "Legal Name"—Enter the legal name of applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application. Use abbreviations to limit the organization name to 50 characters, including spaces and punctuation.

"Organizational Unit"—Enter the name of the primary organizational unit which will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank. Use abbreviations to limit this line to 30 characters, including spaces and punctuation.

"Address"—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. Box number unless both must be used in mailing.

"Name and telephone number of the person to be contacted on matters involving this application (give area code)"—Enter the name and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given here.

*Item 6.* "Employer Identification Number (EIN)"—Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including if known the Central Registry System suffix.

*Item 7.* "Type of Applicant"—Self-explanatory.

*Item 8.* "Type of Application"—Preprinted on the form.

*Item 9.* "Name of Federal Agency"—Preprinted on the form.

*Item 10.* "Catalog of Federal Domestic Assistance Number"—Enter the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested and its title. If more than one program could be involved in funding the project, enter "multiple." A list of the relevant CFDA numbers is included in section D, part I, of this announcement.

*Item 11.* "Descriptive Title of Applicant's Project" Enter the project title. The title is generally short. It should be no more than 200 characters long, including spaces and punctuation, and should be typed in not more than four lines of 50 characters each. Use a short title which is descriptive of the project, not the priority area title.

*Item 12.* "Areas Affected by Project"—Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

*Item 13.* "Proposed Project"—Enter the desirable starting date for the project, beginning during or after June 1991, and the proposed completion date for the project. Applicants are advised to allow themselves an additional 2–3 months start-up time beyond June 1991 in order to avoid the need for requesting an extension at a later date. Most awards made in response to this program announcement will have starting dates between June 1991 and March 1992. Projects may not exceed the maximum duration specified in the priority area description, generally between 12 to 36 months.

*Item 14.* "Congressional District of Applicant/Project"—Enter the number of the Congressional District where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located. If Statewide, a multi-State effort, or nationwide, enter "00."

*Items 15a–g.* "Estimated Funding"—Enter the amounts requested or to be contributed by Federal and non-Federal sources for the total project period, if the project period is 17 months or less. If the proposed project period exceeds 17 months, enter the budget for the first 12 months only.

*Item 15a.* "Estimated Funding—Federal"—Enter the amount of Federal

funds requested. This amount should be no greater than the maximum amount specified in the priority area description.

*Items 15b–e.* "Estimated Funding—Applicant, State, Local, Other"—Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. These items (b–e) are considered cost-sharing or "matching funds." The value of third party in-kind contributions should be included on appropriate lines as applicable. For more information regarding funding as well as exceptions to these rules, see part II, sections E and F and the specific priority area description.

*Item 15f.* "Estimated Funding—Program Income"—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this income in the Project Narrative Statement.

*Item 15g.* "Estimated Funding—Total"—Enter the sum of items 15a–15e.

*Item 16a.* "Is Application Subject to Review By State Executive Order 12372 Process? Yes."—Enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the listing provided at the end of part III. Review of the application is at the discretion of the SPOC. The SPOC will verify the date noted on the application. If there is a discrepancy in dates, the SPOC may request that the Federal agency delay any proposed funding until the full review time of 60 days is afforded.

*Item 16b.* "Is Application Subject to Review By State Executive Order 12372 Process? No."—Check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

*Item 17.* "Is the Applicant Delinquent on any Federal Debt?"—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

*Item 18.* "To the best of my knowledge and belief, all data in this application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded."—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office. It may be requested.

*Item 18a–c.* "Typed Name of Authorized Representative, Title, Telephone Number"—Enter the name, title and telephone number of the authorized representative of the applicant organization.

*Item 18d.* "Signature of Authorized Representative"—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

*Item 18e.* "Date Signed"—Enter the date the application was signed by the authorized representative.

*2. SF 424A—Budget Information—Non-Construction Programs*

This is a form used by many Federal agencies. For this application, sections A, B, C, and E are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal funding for the proposed project covering (1) the total project period of 17 months or less or (2) the first year budget period, if the proposed project period exceeds 17 months.

*Section A—Budget Summary.* This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs, including third party in-kind contributions, but not program income, in column (f). Enter the total of (e) and (f) in column (g).

*Section B—Budget Categories.* This budget, which includes the Federal as well as non-Federal funding for the proposed project, covers (1) the total project period of 17 months or less or (2) the first-year budget period if the proposed project period exceeds 17 months. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate budget justification should be included to explain fully and justify major items, as indicated below. The types of information to be included in the justification are indicated under each category. The budget justification should immediately follow the table of contents.

*Personnel—Line 6a.* Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, "Other."

*Justification:* Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

*Fringe Benefits—Line 6b.* Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

*Justification:* Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

*Travel—6c.* Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, "Other."

*Justification:* Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

*Equipment—Line 6d.* Enter the total costs of all equipment to be acquired by the project. For State and local governments, including Federally recognized Indian Tribes, "equipment" is non-expendable tangible personal property having a useful life of more than two years and an acquisition cost of $5,000 or more per unit. For all other applicants, the threshold for equipment is $500 or more per unit. The higher threshold for State and local governments became effective October 1, 1988, through the implementation of 45 CFR part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

*Justification:* Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

*Supplies—Line 6e.* Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

*Justification:* Specify general categories of supplies and their costs.

*Contractual—Line 6f.* Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations, including delegate agencies. Also include any contracts with organizations for the provision of

technical assistance. Do not include payments to individuals on this line. If the name of the contractor, scope of work, and estimated total costs are not available or have not been negotiated, include on Line 6h, "Other."

*Justification:* Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements.

*Construction—Line 6g.* Leave blank. New construction is not allowable.

*Other—Line 6h.* Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, include wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as "miscellaneous" and "honoraria" are not allowable.

*Justification:* Specify the costs included.

*Total Direct Charges—Line 6i.* Enter the total of Lines 6a through 6h.

*Indirect Charges—6j.* Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter "none." Generally, this line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments shall enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant. In the case of training grants to other than State or local governments (as defined in title 45, Code of Federal Regulations, part 74), the Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for direct costs, exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

For training grant applications, the entry under line 6j should be the total indirect costs being charged to the project. The Federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a*) by applying the applicant's approved indirect cost rate to the total project (Federal and non-Federal) direct costs.

(b) Calculate the Federal share of indirect costs (b*) at 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

(c) Subtract (b*) from (a*). The remainder is what the applicant can claim as part of its matching cost contribution.

*Justification:* Enclose a copy of the indirect cost rate agreement. Applicants subject to the limitation on the Federal reimbursement of indirect costs for training grants should specify this.

*Total—Line 6k.* Enter the total amounts of lines 6i and 6j.

*Program Income—Line 7.* Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

*Justification:* Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

*Section C—Non-Federal Resources.* This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information under the column entitled "Totals" on line 12, Totals. In-kind contributions are defined in title 45 of the Code of Federal Regulations, part 74.51, as "property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant."

*Justification:* Describe third party in-kind contributions, if included.

*Section D—Forecasted Cash Needs.* Not applicable. Leave blank.

*Section E—Budget Estimate of Federal* Funds Needed For Balance of the Project. This section should only be completed if the total project period exceeds 17 months.

*Totals—Line 20.* For projects that will have more than one budget period, enter the estimated required Federal funds for the second budget period (months 13 through 24) under column "(b) First." If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under "(c) Second." Columns (d) and (e) are not applicable in most instances, since HDS funding is usually limited to a three-year maximum project period.

*Section F—Other Budget Information.*

*Direct Charges—Line 21.* Not applicable.

*Indirect Charges—Line 22.* Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

*Remarks—Line 23.* If the total project period exceeds 17 months, you must enter your proposed non-Federal share of the project budget for each of the remaining years of the project.

*3. Project Summary Description*

Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424, the priority area number as shown at the top of the SF 424, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 1,200 characters, including words, spaces and punctuation. These 1,200 characters become part of the computer database on each project.

Care should be taken to produce a summary description which accurately and concisely reflects the proposal. It should describe the objectives of the project, the approaches to be used and the outcomes expected. The description should also include a list of major products that will result from the proposed project, such as software packages, materials, management procedures, data collection instruments, training packages, or videos (please note that audiovisuals should be closed captioned). The project summary description, together with the information on the SF 424, will constitute the project "abstract." It is the major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

At the bottom of the page, following the summary description, type up to 10 key words which best describe the

proposed project, the service(s) involved and the target population(s) to be covered. The key words are to be selected from the list provided at the end of part III of this announcement. These key words will be used for computerized information retrieval for specific types of funded projects.

*4. Program Narrative Statement*

The Program Narrative Statement is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the priority area description in part II. The narrative should also provide information concerning how the application meets the evaluation criteria (see section C, part II), using the following headings:

(a) *Objectives and Need for Assistance;*
(b) *Results or Benefits Expected;*
(c) *Approach;* and
(d) *Staff Background and Organization's Experience.*

The narrative should be typed double-spaced on a single-side of an 8½" x 11" plain white paper, with 1" margins on all sides. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives and Need for Assistance" as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The length of the application, including the application forms and all attachments, should not exceed 60 pages. A page is a single side of an 8½ x 11" sheet of paper. Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose xeroxing difficulties. These materials, if submitted, will not be included in the review process if they exceed the 60-page limit. Each page of the application will be counted to determine the total length.

It should be noted that there is no page limitation on proposals submitted under Priority Areas 1.27, 1.28, 1.29 and 1.31.

*5. Organizational Capability Statement*

The Organizational Capability Statement should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. This description should cover capabilities not included in the Program Narrative Statement. It may include descriptions of any current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization should be included.

*6. Assurances/Certifications*

Applicants are required to file an SF 424B, Assurances—Non-construction Programs and the Certification Regarding Lobbying. Both must be signed and returned with the application. In addition, applicants must provide certifications regarding: (1) Drug-Free Workplace Requirements; and (2) Debarment and Other Responsibilities. These two certifications are self-explanatory. Copies of these assurances/certifications are reprinted at the end of this announcement and should be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, and Debarment and Other Responsibilities certifications.

For research projects in which human subjects may be at risk, a Protection of Human Subjects Assurance may be required. If there is a question regarding the applicability of this assurance, contact the Office for Research Risks of the National Institutes of Health at (301) 496–7041.

*D. Components of a Complete Application*

A complete application consists of the following items in this order:

1. Application for Federal Assistance (Standard Form 424, REV 4–88);
2. Budget Information—Non-construction Programs (Standard Form 424A, REV 4–88);
3. Table of Contents;
4. Budget justification for Section B—Budget Categories;
5. Letter from the Internal Revenue Service to prove nonprofit status, if necessary;
6. Copy of the applicant's approved indirect cost rate agreement, if appropriate;
7. Project summary description and listing of key words;
8. Program Narrative Statement, organized in four sections addressing the following areas: (a) Objectives and need for assistance, (b) results or benefits expected, (c) approach, and (d) staff background and organization's experience;
9. Organizational capability statement, including an organization chart;
10. Any appendices/attachments;
11. Assurances—Non-construction Programs (Standard Form 424B, REV 4–88);
12. Certification Regarding Lobbying; and
13. Certification of Protection of Human Subjects, if necessary.

*E. The Application Package*

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as, agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

Do not include a self-addressed, stamped acknowledgment card. All applicants will be notified automatically about the receipt of their application and of the four digit identification number assigned to their application. This number and the priority area must be referred to in *ALL* subsequent communication with HDS concerning the application. If acknowledgment of receipt of your application is not received within eight weeks after the deadline date, please notify HDS by telephone at (202) 755–4560.

*F. Checklist for a Complete Application*

The checklist below is for your use to ensure that your application package has been properly prepared.

_____ One original, signed and dated application, plus two copies. Applications for different priority areas are packaged separately;
_____ Application is from an organization which is eligible under the eligibility requirements defined in the priority area description (screening requirement);
_____ Application length does not exceed 60 pages, unless otherwise specified in the priority area description. Application includes:
_____ Application for Federal Assistance (Standard Form 424, REV 4–88);

_____ A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424;
_____ Budget information—Non-construction Programs (Standard Form 424A, REV 4–88);
_____ Table of Contents;
_____ Budget justification;
_____ Letter from Internal Revenue Service to prove nonprofit status, if necessary;
_____ Indirect cost rate agreement, if necessary;
_____ Project summary description and key words;
_____ Program Narrative Statement;
_____ Organizational Capability Statement;
_____ Appendices/attachments, if necessary;
_____ Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88);
_____ Certification Regarding Lobbying; and
_____ Certification of Protection of Human Subjects, if necessary.

Dated: February 1, 1991.

**Mary Sheila Gall,**

*Assistant Secretary for Human Development Services.*

**Wade F. Horn,**

*Commissioner, Administration for Children, Youth and Families.*

**S. Timothy Wapato,**

*Commissioner, Administration for Native Americans.*

**William A. Schambra,**

*Director, Office of Policy, Planning and Legislation.*

**Executive Order 12372—State Single Points of Contact**

*Alabama*

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125–0347, Telephone (205) 284–8905.

*Arizona*

Mrs. Janice Dunn, Attn: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315.

*Arkansas*

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371–1074.

*California*

Loreen McMahon, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480.

*Colorado*

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866–2156.

*Connecticut*

Under Secretary, Attn: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Telephone (203) 566–3410.

*Delaware*

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326.

*District of Columbia*

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, DC 20004, Telephone (202) 727–9111.

*Florida*

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, The Capitol, Office of Planning and Budgeting, Tallahassee, Florida 32399–0001, Telephone (904) 488–7810.

*Georgia*

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW., Atlanta, Georgia 30334, Telephone (404) 656–3855.

*Hawaii*

Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol, Honolulu, Hawaii 96813, Telephone (808) 548–3016 or 548–3085.

*Illinois*

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782–8639.

*Indiana*

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610.

*Iowa*

Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725.

*Kentucky*

Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564–2382.

*Maine*

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261.

*Maryland*

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490.

*Massachusetts*

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

*Michigan*

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7111. Please direct correspondence to: Manager, Federal Project Review, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Lansing, Michigan 48909. Telephone (517) 373–6223.

*Mississippi*

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone (601) 960–4280.

*Missouri*

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834.

*Montana*

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202—State Capitol, Helena, Montana 59620, Telephone (406) 444–5522.

*Nevada*

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4420. Attention: John B. Walker, Clearinghouse Coordinator.

*New Hampshire*

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental ReviewProcess/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155. Please direct correspondence and questions to: Attention: Jim Bieber, Telephone (603) 271–2155.

*New Jersey*

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613. Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government

Services, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025.

*New Mexico*

Dorothy E. (Duffy) Rodriguez, Deputy Director, State Budget Division, Department of Finance & Administration, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640.

*New York*

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605.

*North Carolina*

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733–0499.

*North Dakota*

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224–2094.

*Ohio*

Larry Weaver, State Single Point of Contact,State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698.

*Oklahoma*

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Telephone (405) 843–9770.

*Oregon*

Attn: Delores Streeter, State Single Point of Contact, Intergovernmental Relations Division, State Clearinghouse, 155 Cottage Street NE., Salem, Oregon 97310, Telephone (503) 373–1998.

*Pennsylvania*

Sandra Kline, Project Coordinator, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Telephone (717) 783–3700.

*Rhode Island*

Daniel W. Varin, Associate Director, Statewide Planning Program, Departmentof Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656. Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

*South Carolina*

Danny L. Cromer,State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0493.

*South Dakota*

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773–3212.

*Tennessee*

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676.

*Texas*

Thomas Adams, Office of Budget and Planning, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778.

*Utah*

Dale Hatch, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Telephone (801) 538–1547.

*Vermont*

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326.

*Washington*

Marilyn Dawson, Washington Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Olympia, Washington 98504–4151, Telephone (206) 753–4978.

*West Virginia*

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Room 553, Charleston, West Virginia 25305. Telephone (304) 348–4010.

*Wisconsin*

James R. Klauser, Secretary, Wisconsin Department of Administration, 101 South Webster Street, GEF 2, P.O. Box 7864, Madison, Wisconsin 53707–7864, Telephone (608) 266–1741. Please direct correspondence and question to: William C. Carey, Section Chief, Federal-State Relations Office, Wisconsin Department of Administration, Telephone (608) 266–0267.

*Wyoming*

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777–7574.

*Guam*

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285.

*Northern Mariana Islands*

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950.

*Puerto Rico*

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444.

*Virgin Islands*

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Telephone (809) 774–0750.

**List of Key Words**

Abandoned infants/children
Abuse
Accreditation
Adoption
Advocacy and guardianship
Adult day care (use home care with aging and elderly)
Adults
African Americans
Aging and elderly
Aging-out
Agriculture
Alcoholism
Allied professional education
Alternative financing
Asians
At-risk youth
Audio-visual
Barrier-free design
Blacks
Budgeting and finance
Business development training
Cable television
Career and vocational education
Caregiving
Case management
Challenge grants
Child abuse and neglect
Child care
Child care centers
Child development
Child health
Child Protective Services
Child welfare
Children
Clearinghouse
Client outcome measures
Coalitions
Collaboration
Colleges
Community
Community care
Community-based
Community college
Community integration
Community foundation
Competitive employment
Comprehensive care
Computer networks
Computers
Conferences
Congregate housing
Consumer education
Continuing education
Contracting
Cooperative agreement
Cooperatives
Coordination
Coordinated services
Correctional facilities
Corrections
Counseling
Courts
Crisis intervention
Crisis nurseries

Cross-cultural
Cross-cutting
Cultural activities
Curriculum
Curriculum development
Data collection
Day care
Day care centers
Deinstitutionalization
Design
Developmental child care
Disabled
Developmental disabilities
Disabilities
Dissemination
Dropouts
Dysfunctional families
Drug-exposed infants
Economic development
Education and training
Effectiveness measures
Efficiency
Elderly persons
Emergency services
Emergency shelters
Employer-supported human services
Employment
Entrepreneurship
Environment
Environmental design
Environmental protection
Evaluation
Exploited youth
Families
Family counseling
Family day care
Family preservation
Family violence
Films
Finance
Fire safety
Fiscal management
Food and nutrition
Food banks
Forecasting
Foster care
Foster grandparents
Foundations
Frail elderly
Friendly visitors
Gerontology training
Group homes
Guardianship
Handbooks
Head Start
Head Start children with disabilities
Health
Hispanics
Historically Black Colleges and Universities (use HBCU)
Home-based services
Home care
Home equity conversions
Homeless
Hospitals
Hospices and nursing homes
Housing
Human services
Immigrants and refugees
Income generation
Independent living
Indians
Infants and toddlers
Informal caregivers
Information centers
Information and referral
Information transfer
In-home care
Institutionalization
Information transfer
Interagency cooperation
Interdisciplinary
Intergenerational
International
Interstate agreements
Intervention
Investigations
Isolated elderly
Job bank
Job clubs
Job placement
Judicial system
Juvenile justice
Latchkey and school-age children
Law enforcement
Legal
Legal counseling
Legislation and model codes
Liability and legal issues
Linkages
Literacy
Living skills
Local government
Low-cost alternatives
Low-income
Males
Mainstreaming
Management
Management information systems
Management training
Manuals
Marketing
Materials
Meals
Mediating structures
Media
Medical
Mental health
Mentally disabled
Mentors
Microcomputers
Minorities
Native Alaskans
Native Americans
Native Hawaiians
Needs assessment
Neglect
Networking
Newsletters
Newspapers
Nursing homes
Nutrition counseling
Older persons
On-the-job training
Outreach
Parent
Parent involvement
Parent education
Pediatric AIDS
Peer counseling
Performance-based contracting
Permanency planning
Placement prevention
Physically disabled
Planning
Prenatal substance abuse
Preschools
Prevention
Preventive care
Primary schools
Private sector
Prostitution
Protective services
Public education
Public/private partnership
Public-private cooperation
Radio
Rate-setting
Readiness skills
Recreation
Recruitment
Recycling
Referral
Refugees
Religious institution(s)
Research
Research center
Residential care
Resource allocation
Resource center
Respite care
Retirement
Runaway and homeless youth
Rural
Samoans
School-age children
Secondary schools
Self-care
Self-help
Self-sufficiency
Seminars
Service integration
Sexual abuse
Sheltered workshops
Single parents
Small business
Social services
Software
Special education
Special needs adoption
Speech impairment
Standards
Stipends
Substance abuse
Support groups
Synthesis
Target populations
Taxes
Technical assistance
Technology
Technology transfer
Teenage parents
Teenage pregnancy
Telecommunications
Television
Temporary child care
Therapeutic day care
Toddlers
Training
Training of trainers
Transitional Living
Transitioning
Transportation
Treatment
Tribally Controlled Community Colleges
Unemployed
University
Urban
Urban Indian Centers
User fees

Veterans
Video
Visual impairment
Vocational training
Volunteers
Vouchers
Women
Workplace
Workshops
Youth

BILLING CODE 4130-01-M

Priority Area Number 1.16

OMB Approval No. 0348-0043

## APPLICATION FOR FEDERAL ASSISTANCE

| 2. DATE SUBMITTED | Applicant Identifier |
|---|---|
| 05/08/91 | |
| 3. DATE RECEIVED BY STATE | State Application Identifier |
| 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☒ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: Childrens Center

Organizational Unit:

Address (give city, county, state, and zip code): 3242 Montgomery Street, Trenton, NJ 08650

Name and telephone number of the person to be contacted on matters involving this application (give area code): Harriet Thomas (609) 555-8237

6. EMPLOYER IDENTIFICATION NUMBER (EIN): 08-7654321

7. TYPE OF APPLICANT: (enter appropriate letter in box) N
A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify) Nonprofit Org.

8. TYPE OF APPLICATION:
☒ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify):

9. NAME OF FEDERAL AGENCY: DHHS, Office of Human Development Svcs.

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 93.608
TITLE: Child Welfare R&D

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT: Specialized Family Foster Care

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.): Mercer County, N.J.

13. PROPOSED PROJECT: Start Date 10/01/91; Ending Date 09/30/94

14. CONGRESSIONAL DISTRICTS OF: a. Applicant 5; b. Project 5

15. ESTIMATED FUNDING:

| | |
|---|---|
| a. Federal | $ 75,000.00 |
| b. Applicant | $ 25,000.00 |
| c. State | $ .00 |
| d. Local | $ .00 |
| e. Other | $ .00 |
| f. Program Income | $ .00 |
| g. TOTAL | $ 100,000.00 |

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE 05/01/91
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☒ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
|---|---|---|
| Alice Farber | Executive Director | 609/555-8235 |

d. Signature of Authorized Representative: Alice Farber
e. Date Signed: 05/08/91

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

SIMPLE

## BUDGET INFORMATION — Non-Construction Programs

### SECTION A – BUDGET SUMMARY

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. Child Welfare | 93.608 | $ | $ | $ 75,000 | $ 25,000 | $ 100,000 |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. TOTALS | | $ | $ | $ 75,000 | $ 25,000 | $ 100,000 |

### SECTION B – BUDGET CATEGORIES

| 6 Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY (1) | (2) | (3) | (4) | Total (5) |
|---|---|---|---|---|---|
| a. Personnel | $ NA | $ NA | $ NA | $ NA | $ 60,000 |
| b. Fringe Benefits | NA | NA | NA | NA | 9,000 |
| c. Travel | NA | NA | NA | NA | 2,000 |
| d. Equipment | NA | NA | NA | NA | 5,000 |
| e. Supplies | NA | NA | NA | NA | 3,500 |
| f. Contractual | NA | NA | NA | NA | 15,500 |
| g. Construction | NA | NA | NA | NA | 0 |
| h. Other | NA | NA | NA | NA | 5,000 |
| i. Total Direct Charges (sum of 6a - 6h) | NA | NA | NA | NA | 100,000 |
| j. Indirect Charges | NA | NA | NA | NA | 0 |
| k. TOTALS (sum of 6i and 6j) | $ NA | $ NA | $ NA | $ NA | $ 100,000 |
| 7. Program Income | $ NA | $ NA | $ NA | $ NA | $ 0 |



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## SECTION C - NON-FEDERAL RESOURCES

| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
|---|---|---|---|---|
| 8. | $ NA | $ NA | $ NA | $ NA |
| 9. | NA | NA | NA | NA |
| 10. | NA | NA | NA | NA |
| 11. | NA | NA | NA | NA |
| 12. TOTALS (sum of lines 8 and 11) | $ 25,000 | $ 0 | $ 0 | $ 25,000 |

## SECTION D - FORECASTED CASH NEEDS

| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
|---|---|---|---|---|---|
| 13. Federal | $ NA | $ NA | $ NA | $ NA | $ NA |
| 14. NonFederal | NA | NA | NA | NA | NA |
| 15. TOTAL (sum of lines 13 and 14) | $ NA | $ NA | $ NA | $ NA | $ NA |

## SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
|---|---|---|---|---|
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | $ NA | $ NA | $ NA | $ NA |
| 17. | NA | NA | NA | NA |
| 18. | NA | NA | NA | NA |
| 19. | NA | NA | NA | NA |
| 20. TOTALS (sum of lines 16 -19) | $ 70,000 | $ 60,000 | $ | $ |

## SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

| 21. Direct Charges: | 22. Indirect Charges: |
|---|---|
| NA | NA |

23. Remarks

Non-Federal Share of Project Cost: $23,333 (2nd year); $20,000 (3rd year)

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Priority Area Number ☐

OMB Approval No. 0348-0043

# APPLICATION FOR FEDERAL ASSISTANCE

| | | |
|---|---|---|
| 1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction *Preapplication* ☐ Construction ☐ Non-Construction | 2. DATE SUBMITTED | Applicant Identifier |
| | 3. DATE RECEIVED BY STATE | State Application Identifier |
| | 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

5. APPLICANT INFORMATION

| | |
|---|---|
| Legal Name | Organizational Unit |
| Address (*give city, county, state, and zip code*): | Name and telephone number of the person to be contacted on matters involving this application (*give area code*) |

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (*enter appropriate letter in box*) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (*specify*):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ☐☐☐

TITLE

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (*cities, counties, states, etc.*):

| 13. PROPOSED PROJECT: | | 14. CONGRESSIONAL DISTRICTS OF: | |
|---|---|---|---|
| Start Date | Ending Date | a. Applicant | b. Project |
| | | | |

| 15. ESTIMATED FUNDING: | | |
|---|---|---|
| a. Federal | $ | .00 |
| b. Applicant | $ | .00 |
| c. State | $ | .00 |
| d. Local | $ | .00 |
| e. Other | $ | .00 |
| f. Program Income | $ | .00 |
| g. TOTAL | $ | .00 |

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
|---|---|---|
| d. Signature of Authorized Representative | | e. Date Signed |

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OMB Approval No. 0348-0044

# BUDGET INFORMATION — Non-Construction Programs

## SECTION A – BUDGET SUMMARY

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. TOTALS | | $ | $ | $ | $ | $ |

## SECTION B – BUDGET CATEGORIES

| 6 Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY (1) | (2) | (3) | (4) | Total (5) |
|---|---|---|---|---|---|
| a. Personnel | $ NA | $ NA | $ NA | $ NA | $ |
| b. Fringe Benefits | NA | NA | NA | NA | |
| c. Travel | NA | NA | NA | NA | |
| d. Equipment | NA | NA | NA | NA | |
| e. Supplies | NA | NA | NA | NA | |
| f. Contractual | NA | NA | NA | NA | |
| g. Construction | NA | NA | NA | NA | NA |
| h. Other | NA | NA | NA | NA | |
| i. Total Direct Charges (sum of 6a - 6h) | NA | NA | NA | NA | |
| j. Indirect Charges | NA | NA | NA | NA | |
| k. TOTALS (sum of 6i and 6j) | $ NA | $ NA | $ NA | $ NA | $ |
| 7. Program Income | $ NA | $ NA | $ NA | $ NA | $ |

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## SECTION C - NON-FEDERAL RESOURCES

| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
|---|---|---|---|---|
| 8. | $ NA | $ NA | $ NA | $ NA |
| 9. | NA | NA | NA | NA |
| 10. | NA | NA | NA | NA |
| 11. | NA | NA | NA | NA |
| 12. TOTALS (sum of lines 8 and 11) | $ | $ | $ | $ |

## SECTION D - FORECASTED CASH NEEDS

| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
|---|---|---|---|---|---|
| 13. Federal | $ NA | $ NA | $ NA | $ NA | $ NA |
| 14. NonFederal | NA | NA | NA | NA | NA |
| 15. TOTAL (sum of lines 13 and 14) | $ NA | $ NA | $ NA | $ NA | $ NA |

## SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
|---|---|---|---|---|
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | $ NA | $ NA | $ NA | $ NA |
| 17. | NA | NA | NA | NA |
| 18. | NA | NA | NA | NA |
| 19. | NA | NA | NA | NA |
| 20. TOTALS (sum of lines 16 -19) | $ | $ | $ | $ |

## SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

| 21. Direct Charges: NA | 22. Indirect Charges: |
|---|---|
| 23. Remarks | |

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OMB Approval No. 0348-0040

## ASSURANCES — NON-CONSTRUCTION PROGRAMS

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE |
|---|---|
| APPLICANT ORGANIZATION | DATE SUBMITTED |

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Organization

_____

Authorized Signature Title Date

NOTE: If Disclosure Forms are required, please contact: Mr. William Sexton, Deputy Director, Grants and Contracts Management Division, Room 341F, HHH Building, 200 Independence Avenue, SW, Washington, D.C. 20201-0001

## U.S. Department of Health and Human Services

## Certification Regarding Drug-Free Workplace Requirements

## Grantees Other Than Individuals

**By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.**

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

**"Controlled substance"** means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

**"Conviction"** means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

**"Criminal drug statute"** means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

**"Employee"** means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

**The grantee certifies that it will or will continue to provide a drug-free workplace by:**

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

**The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):**

**Place of Performance (Street address, City, County, State, ZIP Code)**_____

_____

*Check ___ if there are workplaces on file that are not identified here.*

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

**DGMO Form#2 Revised May 1990**

**Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions**

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction" provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)**

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

[FR Doc. 91-5828 Filed 3-13-91; 8:45 am]

BILLING CODE 4130-01-M

federal register

Thursday
March 14, 1991

Part III

# Department of Health and Human Services

Social Security Administration

20 CFR Parts 404 and 416

Disability Insurance and Supplemental Security Income; Determination of Disability and Administrative Requirements and Procedures; Rule and Proposed Rule

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Social Security Administration**

**[20 CFR Parts 404 and 416]**

**RIN 0960-AB36**

**[Regulations No. 4 and 16]**

# Disability Insurance and Supplemental Security Income; Determinations of Disability—Compliance and Other Changes Involving Administrative Requirements and Procedures

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Final rules.

**SUMMARY:** These regulations for administering the disability determination function make changes to improve the disability determination process by modifying our monitoring and technical and management assistance procedures, and clarifying and updating certain administrative requirements.

When these regulations were published as a Notice of Proposed Rulemaking (NPRM) on April 25, 1986 (51 FR 35638), they contained procedures for implementing section 17 (Measures to Improve Compliance With Federal Law) of Public Law 98-460. However, section 17 was a temporary provision and expired on December 31, 1987. Consequently, it was necessary to remove from these regulations those parts specifically implementing section 17. We have prepared a new NPRM covering compliance procedures which are in accordance with the law in effect after the expiration of section 17. This NPRM is also being published at this time in another section of this **Federal Register** issue in order to give interested parties an opportunity to read the procedures contained in these regulations and the related proposed procedures contained in the NPRM as a whole. Until these new procedures are published as final regulations, we will use the authority granted to us by sections 221 and 1633 of the Social Security Act (the Act) to handle compliance issues not covered by the current regulation.

**EFFECTIVE DATE:** These rules are effective March 14, 1991.

**FOR FURTHER INFORMATION CONTACT:** Irving Darrow, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, telephone (301) 965-1755.

**SUPPLEMENTARY INFORMATION:** Before enactment of the Social Security Disability Amendments of 1980 (Pub. L. 96-265), the disability programs under title II and title XVI of the Act were administered under a Federal-State contractual mechanism established under the 1954 Amendments to the Act. The statute specified that determinations of disability should be made by State agencies under agreement with the Secretary.

Under these agreements the State agencies, on behalf of the Secretary of Health and Human Services, made determinations of disability on the basis of standards and guidelines issued by us. We paid 100 percent of the costs incurred by the States in performing this function. The State agency function included obtaining medical and vocational evidence from the applicant and his or her medical treatment sources, and where necessary, arranging for one or more examinations of the applicant by specialists.

*The 1980 Amendments to the Social Security Act—Public Law 96-265*

In 1980, out of concern for uniform administration of the disability programs, Congress enacted section 304 of the 1980 Amendments. This section increased our statutory authority to improve State performance by requiring the promulgation of regulations establishing standards of performance and administrative requirements and procedures for the States to follow to ensure effective and uniform administration of the disability programs. Section 304 also provided that beginning June 1981, disability determinations were to be made by the State in compliance with the newly prescribed standards unless it notified us, in writing, that it no longer wished to make the determinations. We were authorized to take over the disability determination function if we found that the State had failed to make determinations consistent with our prescribed standards. Certain timeframes, notice requirements, and State agency employee protections were included in these provisions.

Congress was also concerned about the rapid growth of the disability programs that had occurred in the 1970's and the effectiveness of the continuing disability review process. We promulgated performance standards in regulations, effective June 1, 1981, requiring the State agencies which make disability determinations to meet standards in accuracy and processing time and other administrative and procedural areas.

**Regulatory Provisions**

*Definitions*

In these final rules, we have amended the definition of "other written guidelines" in §§ 404.1602 and 416.1002 to include issuances such as rulings and memoranda by the Commissioner, the Deputy Commissioner for Programs, or the Associate Commissioner for Disability to assure uniform national application of program standards and service delivery to the public. This expanded definition is intended to cover special situations when time limitations do not permit the promulgation of guidelines through the regular process. Such special issuances are of major importance to the disability programs, for example, in carrying out court orders.

*Performance Standards*

Under Public Law 96-265, we were required to promulgate regulations establishing whatever standards of performance were considered necessary for a State agency to follow to ensure effective and uniform administration of the disability programs. Effective and uniform administration must be measured in relationship to the processing of benefit determinations of those people who apply for disability benefits. Accordingly, in 1981 we first established accuracy of decision and processing time standards in regulations as the indicators of State agency performance. The objective of a processing time standard is to ensure good public service. The objective of a performance standard for accuracy is to ensure that decisions are rendered in accordance with the Act, our regulations and other written guidelines. Also, as in processing time, the purpose of the performance standard for accuracy is to assure good public service.

Other areas of State agency activity and performance that are not reflected in the processing time or accuracy indicators also affect directly the quality of the agency's service to the public. For example, the cost effectiveness of a State agency's operations, the timeliness of a State agency's medical evidence development requests, and the appropriate use of qualified psychiatrists and psychologists to review mental impairment cases are crucial to providing high-quality service to the public. We are exploring the use of additional indicators to measure State agency performance more comprehensively and appropriately. Other indicators of State agency performance may be published in future regulations. In the meantime, these final

regulations retain performance standards for processing time and accuracy.

We are, however, updating §§ 404.1642(a), 404.1644(a), 416.1042(a), and 416.1044(a) to show that a presumptive disability decision made under title XVI of the Act stops the processing time from running.

*Technical and Management Assistance*

Technical and management assistance is a structured SSA program designed to offer or provide support, assistance, guidance, or resources to improve State agency performance. This may include but is not limited to: onsite reviews, administrative measures, training, or funding. Under our existing regulations, a State agency will receive technical and management assistance when performance reaches unacceptable levels or when performance has significantly declined. We believe that emphasis should be placed on good performance and preventive maintenance which may be far less costly than corrective action taken when the State agency has developed more serious performance problems. We also believe that the need for additional support or assistance should not be viewed solely as a punitive measure brought about by poor performance. We are, therefore, making a number of modifications in the monitoring and technical and management assistance sections of the regulations. We have made the following changes:

- *Technical and Management Assistance*—Change the term "technical and management assistance" to "performance support."
- *Reviews*—Within budgeted resources, conduct fiscal and administrative management reviews and special onsite reviews as a part of the regular performance monitoring process. A fiscal and administrative management review is a fact-finding mission to review particular aspects of State agency operations. During these reviews we also review the quality assurance functions. The fiscal and administrative management review previously was conducted as a part of technical and management assistance and, as a result, was associated with poor performance.
- *Quality Assurance*—Review the State agency quality assurance function to ensure that the State is monitoring the quality of State disability determinations in accordance with generally accepted quality assurance principles, such as random sampling and independent reviews.
- *Assistance Request*—Amend §§ 404.1661 and 416.1061 to show that a State may request assistance at any time that the regular monitoring and review process reveals that assistance could enhance performance. The current regulations do not provide that a State may request assistance.
- *Performance Support*—Further amend §§ 404.1661 and 416.1601 to explain that we will consider offering, or providing upon request, assistance when ongoing reviews and quality assurance activities reveal that performance could be improved by such support. The current regulations only allow optional technical and management assistance when performance significantly declines or when intermediate goals have not been met. These regulations will allow performance support, including State requested support, in a much broader range of circumstances. This support will continue to be provided from State and Social Security Administration staff and budgets.

**Administrative Requirements and Procedures**

*General Administrative Requirements*

The current regulations provide, under the heading "*Organization*" [§§ 404.1620 and 416.1020), that the State is responsible for providing the organizational structure, sufficient qualified personnel, medical consultant services, and a quality assurance function to ensure that disability determinations are made accurately and promptly. Our objective was to regulate only where necessary and to allow the States maximum flexibility to manage the State agencies so long as their performance was acceptable. We, therefore, imposed specific requirements only in the course of a mandatory technical and management assistance program.

It is still our goal to regulate administrative areas only to the extent necessary to ensure effective stewardship of the disability programs and to continue to give the States maximum flexibility to manage the State agencies. However, experience has shown over the past several years that, in some circumstances, a need exists for specific requirements even though mandatory performance support is not needed. A State may have serious deficiencies in one or more functions currently listed under "*Organization*" or in any of the functions included under "*Administrative Responsibilities and Requirements.*" These deficiencies may not necessarily cause the State agency to fall below the thresholds that require mandatory performance support. For example, a State may take action to discontinue its quality assurance program, or may fail to submit timely and accurate reports of its administrative functions. Another example is when a State attempts to contract out functions which our instructions require the State to retain. Even when a clear and serious deficiency may eventually lead to a State agency's requiring mandatory performance support, for example, where a State adopts a medical review procedure for a class of cases that clearly delays processing the cases and imposes evaluation standards which are inconsistent with our regulations or written guidelines, it is unreasonable to expect that we would always wait until the State agency's performance falls below the necessary performance thresholds before initiating corrective measures. We have an obligation to exercise stewardship immediately and to undertake to correct any deficiencies which may cause the State to be found not in substantial compliance with the Act, our regulations, or other written guidelines.

For the above reasons, we have changed the title of §§ 404.1620 and 416.1020 from "*Organization*" to "*General Administrative Requirements.*" We have retained the four administrative functions covered in this section but have deleted the statement that we will impose specific organizational requirements on a State only in the course of a mandatory technical and management assistance program. Instead, we have stated that we will act immediately to remedy any deficiencies in the four administrative functions involved under this section or in the other administrative functions covered individually under "*Administrative Responsibilities and Requirements,*" which are sufficiently serious that, if not corrected, may cause the State to be found not in substantial compliance with the Act, our regulations, or other written guidelines. Nevertheless, in response to concerns raised by several States, we have added language to §§ 404.1620 and 416.1020, to reflect that we will permit States a reasonable opportunity to meet the administrative requirements we may impose under those sections or to correct identified deficiencies after proper notice to the States.

*Facilities*

We amended §§ 404.1623(c) and 416.1023(c) to clarify that access to the premises where the disability determination function is performed includes telecommunications access to State agency management as well as visits. The current regulations provide that we will have "access to the

premises where the disability determination function is performed for purposes of inspecting the work and activities required by regulation and assuring compliance with pertinent Federal statutes and regulations." We believe that the change we are making to these sections will make them clearer and less likely to cause confusion in explaining our access rights.

*Fiscal*

We are revising §§ 404.1626 and 416.1026 to substitute "Office of Management and Budget (OMB) Circular A–87" for "Federal Management Circular 74–4" to reflect a change in this circular. OMB Circular A–87 superseded Federal Management Circular 74–4. We are also making reference to 48 CFR 31.6 of the Federal Acquisition Regulations System and OMB Circular A–87 which define necessary costs for the period after March 31, 1984. We are also revising these sections and §§ 404.1627 and 416.1027 to provide that the States are to arrange for their own audits in accordance with the Single Audit Act of 1984, Public Law 98–502.

The Single Audit Act of 1984 provides for independent audits of financial operations, including compliance with certain provisions of Federal law and regulations. The requirements are established to ensure that audits are made on an organization-wide basis. Since the States are required by the Single Audit Act of 1984 to arrange for audits of their own agencies using Federal guidelines, we will audit State records only if (1) They do not perform their own audits of the State agency under the Single Audit Act of 1984 or (2) they perform a State agency audit but the audit does not meet our program requirements. In either case, we will conduct an audit or review activity as prescribed by the Single Audit Act of 1984.

*Audits*

We are revising §§ 404.1627 and 416.1027 to reflect that the Department of Health and Human Services' Office of Inspector General will not be the principal agency conducting audits of State agencies. The State agencies will be audited by the States under the Single Audit Act of 1984.

In addition, we are revising these sections to provide that the Commissioner of Social Security will have 90 days from the date of receipt of a State's appeal (and all supporting documents) of an audit determination to issue a decision on that appeal. Experience has shown that the 45-day time period previously allowed for the Commissioner's decision did not allow sufficient time for careful investigation and review of all the issues.

*Disputes on Other Matters*

We are revising §§ 404.1681 and 416.1081 to clarify that the "fiscal issues" to be resolved by the Departmental Appeals Board are "monetary disallowances." In accordance with the regulations governing the Departmental Appeals Board (45 CFR part 16), monetary disallowances are the only type of fiscal recommendation, decision, or dispute which is appealable to the Departmental Appeals Board.

**Public Comments**

We published proposed rules to ensure the compliance of State agencies with the Act, SSA regulations, and other written guidelines. We also proposed other changes to improve the disability determination process by revising State agency performance requirements, modifying our technical and management assistance procedures, and clarifying and updating certain administrative requirements. These rules were published as an NPRM in the **Federal Register** on April 25, 1986 (51 FR 15638). Interested persons, organizations, Government agencies, and other groups were given 60 days to comment. The comment period closed on June 24, 1986.

We received comments from 12 individual State Administrators, the Council of State Administrators of Vocational Rehabilitation, the National Association of Disability Examiners, one Governor, and one State Interagency Task Force on Disability. These commenters are affected by the regulations. We also received comments from three individuals.

A number of comments were received on the procedures implementing section 17 (Measures to Improve Compliance With Federal Law) of Pub. L. 98–460. As these procedures were removed from the regulations because section 17 expired on December 31, 1987, we have not prepared responses to these comments.

In drafting these final regulations, we had certain objectives in mind:

- To maintain uniform, national administration of the disability programs by ensuring that all State agencies make disability determinations in a manner consistent with regulations and other written guidelines;
- To improve our service to the public;
- To improve the disability determination process by modifying our technical and management assistance procedures, and by clarifying and updating certain administrative requirements;
- To avoid, where possible, increasing administrative complexity and costs.

These objectives also guided us as we evaluated the comments received from State employees and the public. Some of the comments were not germane to these particular regulations. These comments are not addressed in the preamble. Other comments are condensed, summarized, or paraphrased. We have responded to the issues raised in comments that are germane to these regulations.

For ease of comprehension and for perspective, we have grouped comments according to the issues raised. The issues and our responses are presented in the order in which the regulations are organized.

*Definitions*

*Issue:* Four commenters expressed concern that the expanded definition of "other written guidelines" (§§ 404.1602 and 416.1002) gives SSA the authority to bypass the formal rulemaking process and the intent of Congress as expressed in section 10 of the Social Security Disability Benefits Reform Act of 1984.

*Response:* Section 10 of the Social Security Disability Benefits Reform Act of 1984 requires the issuance of uniform standards governing disability determinations as regulations under the rulemaking procedures of the Administrative Procedure Act. Such standards are the policies and procedures that could reasonably be expected to have an impact on findings of eligibility. In enacting section 10, Congress did not intend to subject other issuances, i.e., issuances which do not affect the outcome of disability determinations, to the Administrative Procedure Act. As noted in the legislative history (the Senate Finance Committee Report 98–466, May 18, 1984, p. 19) of this provision, "The Committee is particularly concerned that SSA retain the flexibility to respond quickly to changes in conditions through the issuance of other less formal vehicles including Rulings and POMS" [Program Operations Manual System]. Also, the Congress, in amending the Social Security Act in 1984, did not change section 221(a)(2) of the Act that requires States to make disability determinations in accordance with "* * * standards and criteria contained in regulations or other written guidelines of the Secretary * * *."

We have clarified the definition of "other written guidelines" to show that they will be instructive, interpretive,

clarifying, and/or administrative in nature and will not represent new substantive rules that can reasonably be expected to impact on findings of eligibility.

*General Administrative Requirements*

*Issues:* One commenter said the phrase "* * * to correct the areas of deficiencies which may later cause the State to be not in compliance * * *" (§§ 404.1620 and 416.1020) conveys overly broad authority to SSA and should be deleted. The commenter further stated that "[w]hen such authority is coupled with less than hands-on experience in directing the operation of a State agency, it holds the promise of poor program administration."

This commenter also said that the last sentence of §§ 404.1640 and 416.1040 speaks of judging State agency compliance by adherence to other program requirements such as availability of specialized medical resources and consultative examination oversight activities but no details are given on how such judgments would be made.

*Responses:* We intend to regulate administrative areas only to the extent necessary to ensure effective stewardship of the disability programs. Effective and appropriate stewardship requires that we undertake immediately to correct any deficiencies which may cause a State agency to be found in substantial noncompliance with the Act, our regulations or other written guidelines. In this regard, experienced disability program personnel will work closely with DDS administrators and staff to evaluate and correct any deficiencies which may be impediments to efficient, cost effective disability program administration.

We have retained the final sentence in §§ 404.1640 and 416.1040 to emphasize the point made in the opening sentence of these sections, which is that the State agency must substantially comply with the Act, our regulations, and other written guidelines pertaining to program matters besides the timely and accurate processing of disability claims. We cannot provide definitive guides as to how judgments of substantial noncompliance will be made. Questions of substantial noncompliance will be resolved on the basis of multiple factors including the nature and degree of such noncompliance, the significance of such noncompliance in terms of the integrity and effectiveness of the disability program, etc. However, because of the variations in the factors that must be considered in judging questions of noncompliance, we have deleted the references to specific program requirements identified in the Notice of Proposed Rulemaking.

*Facilities*

*Issue:* A commenter said that the inclusion of "telephone access (§§ 404.1623(c) and 416.1023(c)) to the managers of a disability determination services (DDS)" is unnecessary as it is difficult to believe that SSA was ever refused such access.

*Response:* We believe that it is necessary to explain in the regulations that access to the premises where disability functions are performed and managed is not limited to physical access but includes other means of contacting State agencies and obtaining information about their functions. The current regulations in discussing access refer to notifying the State of "visits" and this may give the impression that access is limited to visits only. Therefore, we changed §§ 404.1623(c) and 416.1023(c) to clarify the meaning of the term "access" and to show that we may use means other than visits to obtain information about State agency disability determination functions.

*Fiscal*

*Issues:* One commenter said the requirement (in §§ 404.1626(e) and 416.1026(e)) that States must submit a report of expenditures after the close of a period for which funds have been made available constitutes additional reporting, since reports are currently submitted on both a monthly and quarterly basis, and this additional reporting should not be required.

Another commenter requested that Federal allocations of funds permit for year-long planning by the States. Another commenter stated that the current method of providing funds on a quarterly basis, with frequent rescissions, is an ineffective budget procedure. In this commenter's opinion, such a procedure leaves the State agency unable to prepare and execute a realistic plan and the resultant reactive position often negatively affects processing time.

*Responses:* Current regulations require that a State submit a report of its actual expenditures after the close of the period for which funds have been made available to the State. The passage being questioned by the commenter merely reiterates language in the current regulations and does not constitute a requirement for additional reports.

We are committed to providing the States with annual planning information in advance of the fiscal year on the resources that will be available for the disability program. This annual planning information enables the States to prepare and execute more realistic management plans and the quarterly allocation of fiscal resources enables us to manage the resources available for the disability program in a cost effective manner.

*Audits*

*Issues:* One commenter expressed a concern that SSA-mandated audits by the States should be reviewed in light of existing audit processes to minimize duplication. That same commenter suggested that the current 30-day period permitted by the regulations for a State to submit a written appeal of a disputed audit finding should be extended to 60 days. This additional time is believed to be needed since most State organizational structure and reporting requirements necessitate more time for a review and careful evaluation of critical fiscal reports and information. The commenter is of the opinion that providing the States with additional time is equitable since we are proposing that the Commissioner be given 90 days instead of the current 45 days to respond to audit appeals.

*Responses:* The proposed regulation was written to conform with the requirements of Public Law 98–502, the Single Audit Act of 1984. This law requires the States to conduct annual audits, unless less frequent audits are mandated by State law. These audits are to be conducted by an independent auditor in accordance with generally-accepted government auditing standards. Additional audits will not be required unless the audit performed by the State lacks sufficient information to verify that program funds were used in accordance with Federal regulations, in which case, the Federal Government retains the authority to make or contract for additional audits. These are the only audits that SSA plans to use to verify State expenditures for the disability program and no duplicative audits are planned.

We concur with the commenter who requested that the period for preparing an audit appeal should be extended to 60 days in order to allow the States sufficient time for a careful review and investigation of all issues. Sections 404.1627 and 416.1027 have been changed to reflect the 60-day period.

*Target Levels of Performance*

*Issue:* Two commenters said that the target levels for processing time should be increased to coincide with the increase in the processing time threshold levels. The commenters cited new documentation requirements,

improved rationale requirements, court orders, and revised mental criteria as some of the changes that affect the States' ability to attain the target levels. The commenters believe that since we acknowledge through increased processing time threshold levels the impact such changes have had on processing times, we should also increase the processing time target levels.

*Response:* Because the target levels are intended as the optimum level of performance a State agency should strive to attain, we believe target levels, as goals, should be kept at a high level. Consequently, it is appropriate that State agencies may find it difficult to attain the processing time target levels even though several State agencies are currently close to meeting these targets. It is also imperative that we not compromise our goals on timeliness by reducing the target levels.

*Intermediate Goals*

*Issue:* Several commenters recommended that mandatory intermediate goals for title II and title XVI cases be eliminated. They believe that the establishment of minimum intermediate goals for the State agencies to reach in effect, creates a new, lower threshold level.

*Response:* We have eliminated mandatory minimum intermediate goals for title II and title XVI processing times. However, as is the current practice, intermediate goals will continue to be established and monitored by SSA's Regional Commissioners after negotiation with each State agency.

*Processing Time Thresholds*

*Issues:* Several commenters believe the threshold levels in the NPRM for processing time are unrealistic in view of recent changes in the disability program. The commenters believe the processing time standards need to be substantially increased to account for the cumulative effects of such changes as documentation requirements imposed by the new listings, the new consultative examination guidelines, improved rationale requirements and the effects of court orders.

Several commenters wanted the processing time thresholds to be representative of current mean processing time data, i.e., not based on fiscal year 1984 data as was the case with the proposed thresholds. The commenters wanted the thresholds to be based on up-to-date statistics and reassessed yearly.

One commenter recommended that perhaps a cost-effectiveness or efficiency standard could be developed that encompasses processing time and more realistically measures performance.

One commenter stated that if it is important to include all types of cases in the proposed performance accuracy standard, the same should be true for processing time. This commenter believed that the inclusion of all cases adjudicated by the State agency would more accurately reflect a State's performance.

*Responses:* We agree with the commenters who believe the proposed processing times are unrealistic in view of recent disability program changes and will defer revising the processing time thresholds until an up-to-date indepth analysis of the impact of recent changes on processing time can be assessed over time.

Our current processing time standards are based on past State agency performance. There were several major events in the recent past which have had a significant impact on the time it takes to process cases. For example, there was a national moratorium during which continuing disability review cases were not processed; there are new requirements for obtaining medical evidence of record from treating sources; there are new standards for documenting and evaluating continuing disability review cases; and there are new rules for documenting and evaluating mental impairment cases. The impact of these and other changes must be carefully assessed over time to arrive at fair and workable processing time standards. Also, we could not include continuing disability review or reconsideration cases in the processing time standards because our current system does not measure processing time in these types of cases. We are improving our system, however, so that we will be obtaining this information in the near future. Therefore, we will delay making any changes in the processing time standards until we can make a complete and up-to-date analysis of the entire range of processing time issues on all types of cases evaluated by the State agencies.

*Performance Accuracy Threshold*

*Issues:* Several commenters do not believe the performance accuracy threshold in the NPRM should be increased from 90.6 percent to 93.0 percent for all cases, i.e., initial, reconsideration, and continuing disability review cases. The commenters do not believe the performance accuracy threshold should be changed for the following reasons: there is not adequate data to determine what effect the inclusion of continuing disability review cases will have on the threshold; current State agency staff do not have experience in processing continuing disability review cases; continuing disability review claims evaluation has undergone radical changes; and, there have been budget cuts and staff reductions that will affect State agency performance. A few commenters did not believe that continuing disability review or reconsideration cases should be included in the performance accuracy rate regardless of the level of the threshold.

However, several commenters agreed that raising the performance accuracy threshold for all cases combined is realistic considering current performance.

*Responses:* We agree that the performance accuracy threshold should not be raised until the full impact of recent disability program changes can be more thoroughly analyzed. In addition, we do not believe the performance accuracy threshold should be expanded, at this time, to include continuing disability review and reconsideration cases.

There have been major changes in requirements for documenting and evaluating disability claims. These changes have required extensive training of staff who make disability determinations and who review these determinations. The changes include requirements for obtaining medical evidence of record from treating sources in all cases, for documenting and evaluating evidence of mental impairment in all cases and for documenting and evaluating medical improvement in continuing disability review cases. Until the impact of these changes can be determined, revising the performance accuracy standard, either through expanding the categories of cases covered by this standard or through increasing thresholds, would be premature.

In the NPRM, we also proposed to change the term "performance accuracy standard" to "documentation/decision standard" because the appropriateness and thoroughness of the documentation as well as the accuracy of the decision are measured by the performance accuracy standard. Because the term documentation/decision standard is more descriptive of the standard, it is a name change only. Since we are not revising the performance accuracy standard at this time, we also wish to defer changing the title of this standard. Consequently, we will postpone changing the name of this standard until we are able to make the other necessary

revisions in the performance accuracy standard.

*Performance Accuracy Rate Data*

*Issues:* One commenter expressed concern that because we determine the performance accuracy rates through a quality review program that is decentralized in 10 regional offices, there will be differences in the reviews conducted, and thus the standards would be inequitable as a measurement of State agency performance. The commenter suggested that the reviews for this standard be accomplished through a central office review or that each of the 10 disability quality branches review claims from all States.

Another commenter cautioned against the disability quality branches being given additional leeway to impose their judgment in case documentation. The commenter believes that citing a deficiency or error when the decision is correct and requiring inclusion of information which will not change a case decision is time-consuming. They believe an agency should be judged by decisional accuracy only.

One commenter recommended that performance accuracy standards be based on a consistently more accurate sample than is currently required.

*Responses:* A recent organizational change in SSA has already centralized the management and supervision of the regional reviewing components under the office of the Chief Financial Officer in SSA headquarters. The Chief Financial Officer will also be responsible for the ongoing consistency review of a representative sample of the cases reviewed in the 10 regional reviewing components to assure uniform application of the law and regulations in the review process. Further centralization of the review process will continue to be an option available to SSA as experience is gained with the centralized management of this function.

Deficiencies noted as a result of our regular quality reviews are charged only when the Federal quality review finds that a disability determination does not conform to the requirements in the Social Security Regulations, Rulings, and other written guidelines such as the Program Operations Manual System. Nonconformance is indicated by insufficient documented evidence to support the disability decision or a decision that is contradicted by the documented evidence or the guidelines for making decisions. We believe it is imperative that the decision be accurate and based on properly developed medical and nonmedical evidence.

Quality assurance samples are designed to produce quarterly performance accuracy rates that have plus or minus 5 percent sampling variability at the 95 percent confidence level, provided that the State agency accuracy rate is greater than 90 percent. The techniques used to sample and evaluate State agency performance are consistent with those found in the current literature on statistics, sampling, and quality control.

*Performance Support*

*Issues:* One commenter believes the promise to provide support "at any time" it is considered necessary is too broad and should be clarified. The same commenter wanted more specifics as to when optional support would be granted because of a decline in performance, (e.g., after a decline of 1 month, or one quarter) and how great a decline in performance is needed to request support. The same commenter also wanted a provision for a State to appeal a denial of its request for optional support.

One commenter believes the individuals performing the onsite reviews and recommending the specific types of performance support must have a great deal of program knowledge in order to be of any worthwhile assistance.

*Responses:* We may offer, or a State may request, performance support at any time that the regular monitoring and review process reveals that support could enhance performance. Furthermore, this provision is intended to allow State agencies maximum flexibility in requesting performance support at any time that they deem it necessary to help improve their performance. It is impossible to be specific as to when optional performance support will be granted because of the numerous factors that are considered in such approvals, e.g., budget constraints, the type of support requested or the benefits the requested support may produce. We will weigh these factors and others in the approval or disapproval of a request for performance support. Optional performance support is not intended to be forced on a State agency and will only be offered after consultation with the State agency and regional office as to the type and appropriateness of the support.

We do not believe that it is necessary to establish appeal rights for a State that has been denied a request for optional performance support. We will consider any legitimate request for support if it is determined that such support may prove beneficial to the timely and accurate processing of disability cases in the State agency. However, it must be realized that valid requests for optional performance support may have to be denied because of a lack of funds.

We agree that personnel who conduct performance support services must have a great deal of knowledge about the disability program and the functions of a State agency and thus we attempt to send staff with particular expertise, e.g., performance management, monitoring consultative examinations, budgeting, etc. All onsite reviews of a State agency's disability functions are conducted by a combination of knowledgeable personnel from SSA's central and regional offices with assistance from the State. Also, these reviews are conducted in accordance with detailed guidelines that have been developed with the assistance of State agency personnel and these guidelines have been distributed to all State agencies.

*Good Cause*

*Issues:* Two commenters believe that we should expand the list of factors that we consider in determining good cause for not following regulations and other written procedures. Two others feel that we should cite specific examples in the regulations of when we would find good cause.

*Responses:* There are many factors we will consider in determining good cause. The regulations list only a few examples. We do not believe that it is practical or necessary to provide a comprehensive list since all pertinent factors, whether listed in regulations or not, will be considered when arriving at a determination of good cause.

The factors we consider in determining good cause carry varying degrees of weight and good cause cannot be established without considering all the factors and the degree of weight each carries. The factors and degree of weight each carries will depend upon the circumstances of the particular case and, therefore, cannot be determined beforehand. Thus, we are opposed to citing specific examples of good cause in the regulations.

*Additional Changes*

Policy and Operating Instructions

We have revised §§ 404.1615 and 416.1015 to show that State agency disability hearing officers also make disability determinations.

We have revised §§ 404.1633(b) and 416.1033(b) to conform to the modified definition of "other written guidelines" contained in §§ 404.1602 and 416.1002.

We have changed the term "technical and management assistance" to "performance support" in §§ 404.1641, 416.1041, 404.1670, 416.1070, 404.1680, and 416.1080. These are name changes only. No substantive changes were made in these sections. Also, where applicable, we have changed the term (or its derivatives) "not in substantial compliance" to "substantial failure" to reflect the current terminology in the statute.

*Conclusion*

We believe these regulations will improve the management of the disability programs. Our objective is to place the right person in benefit status in a timely manner wherever in the country he or she may be living, and to pay the proper amount of benefits so long as that person is entitled to benefits. These regulations should promote uniform application of disability policy and procedures nationwide. We have the obligation under the law for seeing that the title II and title XVI disability programs are uniformly, efficiently, and equitably administered and intend to make every effort to meet this obligation within the structure of the existing Federal/State relationship.

**Regulatory Procedures**

*Executive Order 12291*

The Secretary has determined that this is not a major rule under Executive Order 12291 and does not meet any of the criteria for a major regulation. These regulations only make some modifications to the regulations which implemented section 304 of Public Law 96–265 (the "Social Security Amendments of 1980"). Therefore, a regulatory impact analysis is not required.

*Regulatory Flexibility Act*

We certify that these regulations will not, when promulgated, have a significant economic impact on a substantial number of small entities because they only affect State agencies making disability determinations under title II and title XVI of the Act. Prior to June 1981, these same State agencies made these disability determinations under agreements with the Secretary.

*Paperwork Reduction Act*

Sections 404.1626(e), 404.1627 (a)(3) and (b)(3), 416.1026(e), and 416.1027 (a)(3) and (b)(3), of these final rules contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we have submitted a copy of these rules to the Office of Management and Budget for its review and approval of these information collection requirements. Other organizations and individuals desiring to submit comments should submit them to the agency official designated for this purpose, whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC, ATTN: Desk Officer for HHS. The sections cited above are not effective until approved by the Office of Management and Budget. We will publish a notice in the **Federal Register** informing the public of the Office of Management and Budget's action.

(Catalog of Federal Domestic Program Nos. 13.802, Social Security Disability Insurance; 13.807 Supplemental Security Income)

**List of Subjects**

*20 CFR Part 404*

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance.

*20 CFR Part 416*

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: September 13, 1990.

**Gwendolyn S. King,**

*Commissioner of Social Security.*

Approved: January 28, 1991.

**Louis W. Sullivan,**

*Secretary of Health and Human Services.*

Chapter III, parts 404 and 416 of title 20 of the Code of Federal Regulations is amended as shown.

## PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950– )

1. The authority citation for subpart Q of part 404 continues to read as follows:

Authority: Secs. 205(a), 221, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 421, and 1302.

2. In § 404.1602, the definition of "other written guidelines" is revised to read as follows:

**§ 404.1602 Definitions.**

* * * * *

*Other written guidelines* means written issuances such as Social Security Rulings and memoranda by the Commissioner of Social Security, the Deputy Commissioner for Programs, or the Associate Commissioner for Disability and the procedures, guides, and operating instructions in the Disability Insurance sections of the Program Operations Manual System, that are instructive, interpretive, clarifying, and/or administrative and not designated as advisory or discretionary. The purpose of including the foregoing material in the definition is to assure uniform national application of program standards and service delivery to the public.

* * * * *

3. Section 404.1615 is amended by revising paragraph (c) to read as follows:

**§ 404.1615 Making disability determinations.**

* * * * *

(c) Disability determinations will be made by either:

(1) A State agency medical or psychological consultant and a State agency disability examiner or

(2) A State agency disability hearing officer.

See § 404.1616 for the definition of medical or psychological consultant and § 404.915 for the definition of disability hearing officer. The State agency disability examiner and disability hearing officer must be qualified to interpret and evaluate medical reports and other evidence relating to the claimant's physical or mental impairments and as necessary to determine the capacities of the claimant to perform substantial gainful activity. See § 404.1572 for what we mean by substantial gainful activity.

* * * * *

4. Section 404.1620 is amended by revising the section heading and paragraph (a) to read as follows:

**§ 404.1620 General administrative requirements.**

(a) The State will provide the organizational structure, qualified personnel, medical consultant services, and a quality assurance function sufficient to ensure that disability determinations are made accurately and promptly. We may impose specific administrative requirements in these areas and in those under "Administrative Responsibilities and Requirements" in order to establish uniform, national administrative practices or to correct the areas of deficiencies which may later cause the State to be substantially failing to comply with our regulations or other written guidelines. We will notify the State, in writing, of the administrative requirements being imposed and of any administrative deficiencies it is required to correct. We will allow the State 90

days from the date of this notice to make appropriate corrections. Once corrected, we will monitor the State's administrative practices for 180 days. If the State does not meet the requirements or correct all of the deficiencies, or, if some of the deficiencies recur, we may initiate procedures to determine if the State is substantially failing to follow our regulations or other written guidelines.

* * * * *

5. Section 404.1623 is amended by revising paragraph (c) to read as follows:

**§ 404.1623 Facilities.**

* * * * *

(c) *Access.* The State will permit us access to the premises where the disability determination function is performed and also where it is managed for the purposes of inspecting and obtaining information about the work and activities required by our regulations and assuring compliance with pertinent Federal statutes and regulations. Access includes personal onsite visits and other means, such as telecommunications, of contacting the State agency to obtain information about its functions. We will contact the State agency and give reasonable prior notice of the times and purposes of any visits.

6. Section 404.1626 is amended by revising paragraphs (a) and (e) to read as follows:

**§ 404.1626 Fiscal.**

(a) We will give the State funds, in advance or by way of reimbursement, for necessary costs in making disability determinations under these regulations. Necessary costs are direct as well as indirect costs as defined in 41 CFR part 1–15, subpart 1–15.7 of the Federal Procurement Regulations System for costs incurred before April 1, 1984; and 48 CFR part 31, subpart 31.6 of the Federal Acquisition Regulations System and Federal Management Circular A–74–4 [1] as amended or superseded for costs incurred after March 31, 1984.

* * * *

(e) After the close of a period for which funds have been made available to the State, the State will submit a report of its expenditures. Based on an audit arranged by the State under Public Law 98–502, the Single Audit Act of 1984, or by the Inspector General of the Department of Health and Human Services or based on an audit or review by the Social Security Administration (see § 404.1627), we will determine whether the expenditures were consistent with cost principles described in 41 CFR part 1–15, subpart 1–15.7 for costs incurred before April 1, 1984; and 48 CFR part 31, subpart 31.6 and Federal Management Circular A–741–4 for costs incurred after March 31, 1984; and in other applicable written guidelines in effect at the time the expenditures were made or incurred.

* * * *

7. Section 404.1627 is revised to read as follows:

**§ 404.1627 Audits.**

(a) *Audits performed by the State.* (1) *Generally.* Audits of accounts and records pertaining to the administration of the disability program under the Act, will be performed by the States in accordance with the Single Audit Act of 1984 (Public. Law. 98–502) which establishes audit requirements for States receiving Federal assistance. If the audit performed by the State meets our program requirements, we will accept the findings and recommendations of the audit. The State will make every effort to act upon and resolve any items questioned in the audit.

(2) *Questioned items.* Items questioned as a result of an audit under the Single Audit Act of 1984 of a cross-cutting nature will be resolved by the Department of Health and Human Services, Office of Grant and Contract Financial Management. A cross-cutting issue is one that involves more than one Federal awarding agency. Questioned items affecting only the disability program will be resolved by SSA in accord with paragraph (b)(2) of this section.

(3) *State appeal of audit determinations.* The Office of Grant and Contract Financial Management will notify the State of its determination on questioned cross-cutting items. If the State disagrees with that determination, it may appeal in writing within 60 days of receiving the determination. State appeals of a cross-cutting issue as a result of an audit under the Single Audit Act of 1984 will be made to the Department of Health and Human Services' Departmental Appeals Board. The rules for hearings and appeals are provided in 45 CFR part 16.

(b) *Audits performed by the Secretary.* (1) *Generally.* If the State does not perform an audit under the Single Audit Act of 1984 or the audit performed is not satisfactory for disability program purposes, the books of account and records in the State pertaining to the administrations of the disability programs under the Act will be audited by the Department of Health and Human Services' Inspector General or audited or reviewed by SSA as appropriate. These audits or reviews will be conducted to determine whether the expenditures were made for the intended purposes and in amounts necessary for the proper and efficient administration of the disability programs. Audits or reviews will also be made to inspect the work and activities required by the regulations to ensure compliance with pertinent Federal statutes and regulations. The State will make every effort to act upon and resolve any items questioned in an audit or review.

(2) *Questioned items.* Expenditures of State agencies will be audited or reviewed, as appropriate, on the basis of cost principles and written guidelines in effect at the time the expenditures were made or incurred. Both the State and the State agency will be informed and given a full explanation of any items questioned. They will be given reasonable time to explain items questioned. Any explanation furnished by the State or State agency will be given full consideration before a final determination is made on the audit or review report.

(3) *State appeal of audit determinations.* The appropriate Social Security Administration Regional Commissioner will notify the State of his or her determination on the audit or review report. If the State disagrees with that determination, the State may request reconsideration in writing within 60 days of the date of the Regional Commissioner's notice of the determination. The written request may be made, through the Associate Commissioner, Office of Disability, to the Commissioner of Social Security, room 900, Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235. The Commissioner will make a determination and notify the State of the decision in writing no later than 90 days from the date the Social Security Administration receives the State's appeal and all supporting documents. The decision by the Commissioner on other than monetary disallowances will be final and binding upon the State. The decision by the Commissioner on monetary disallowances will be final and binding upon the State unless the State appeals the decision in writing to the Department of Health and Human Services, Departmental Appeals Board within 30 days after receiving the Commissioner's decision. See § 404.1683.

[1] The circular is available from the Office of Administration, Publications Unit, Rm. G–236, New Executive Office Bldg., Washington, DC 20503.

8. Section 404.1633 is amended by revising paragraph (b) to read as follows:

**§ 404.1633 Policies and operating instructions.**

* * * * *

(b) The State agency making determinations of disability will comply with our written guidelines that are not designated as advisory or discretionary (See § 404.1602 for what we mean by written guidelines.)

* * * * *

9. Section 404.1640 is revised to read as follows:

**§ 404.1640 General.**

The following sections provide the procedures and guidelines we use to determine whether the State agency is substantially complying with our regulations and other written guidelines, including meeting established national performance standards. We use performance standards to help assure effective and uniform administration of our disability programs and to measure whether the performance of the disability determination function by each State agency is acceptable. Also, the standards are designed to improve overall State agency performance in the disability determination process and to ensure that benefits are made available to all eligible persons in an accurate and efficient manner. We measure the performance of a State agency in two areas—processing time and quality of documentation and decisions on claims. State agency compliance is also judged by State agency adherence to other program requirements.

10. Section 404.1641 is amended by revising paragraph (d) to read as follows:

**§ 404.1641 Standards of performance.**

* * * * *

(d) *Intermediate goals.* Intermediate goals are levels of performance between the threshold levels and the target levels established by our appropriate Regional Commissioner after negotiation with each State agency. The intermediate goals are designed to help the State agencies reach the target levels. Failure to meet these goals is not a cause for considering the State agency to be substantially failing to comply with the performance standards. However, failure to meet the intermediate goals may result in consultation and an offer of optional performance support depending on the availability of our resources.

11. Section 404.1642 is amended by revising paragraph (a) to read as follows:

**§ 404.1642 Processing time standards.**

(a) *General.* Title II processing time refers to the average number of days, including Saturdays, Sundays, and holidays, it takes a State agency to process an initial disability claim from the day the case folder is received in the State agency until the day it is released to us by the State agency. Title XVI processing time refers to the average number of days, including Saturdays, Sundays, and holidays, from the day of receipt of the initial disability claim in the State agency until systems input of a presumptive disability decision or the day the case folder is released to us by the State agency, whichever is earlier.

* * * * *

12. Section 404.1644 is amended by revising paragraph (a) to read as follows:

**§ 404.1644 How and when we determine whether the processing time standards are met.**

(a) *How we determine processing times.* For all initial title II cases, we calculate the mean number of days, including Saturdays, Sundays and holidays, from the day the case folder is received in the State agency until the day it is released to us by the State agency. For initial title XVI cases, we calculate the mean number of days, including Saturdays, Sundays, and holidays, from the day the case folder is received in the State agency until the day there is a systems input of a presumptive disability decision or the day the case folder is released to us by the State agency, whichever is earlier.

* * * * *

13. Section 404.1650 is revised to read as follows:

**§ 404.1650 Action we will take if a State agency does not meet the standards.**

If a State agency does not meet two of the three established threshold levels (one of which must be performance accuracy) for two or more consecutive calendar quarters, we will notify the State agency in writing that it is not meeting the standards. Following our notification, we will provide the State agency appropriate performance support described in §§ 404.1660, 404.1661 and 404.1662 for a period of up to 12 months.

14. The undesignated center heading preceding § 404.1660 is revised to read *Performance Monitoring and Support.*

15. Section 404.1660 is revised to read as follows:

**§ 404.1660 How we will monitor.**

We will regularly analyze State agency combined title II and title XVI initial performance accuracy rate, title II initial processing time, and title XVI initial processing time. Within budgeted resources, we will also routinely conduct fiscal and administrative management reviews and special onsite reviews. A fiscal and administrative management review is a fact-finding mission to review particular aspects of State agency operations. During these reviews we will also review the quality assurance function. This regular monitoring and review program will allow us to determine the progress each State is making and the type and extent of performance support we will provide to help the State progress toward threshold, intermediate, and/or target levels.

16. Section 404.1661 is revised to read as follows:

**§ 404.1661 When we will provide performance support.**

(a) *Optional support.* We may offer, or a State may request, performance support at any time that the regular monitoring and review process reveals that support could enhance performance. The State does not have to be below the initial performance accuracy rate of 90.6 percent to receive performance support. Support will be offered, or granted upon request, based on available resources.

(b) *Mandatory support.* (1) We will provide a State agency with mandatory performance support if regular monitoring and review reveal that two of three threshold levels (one of which must be performance accuracy) are not met for two consecutive calendar quarters.

(2) We may also decide to provide a State agency with mandatory performance support if regular monitoring and review reveal that any one of the three threshold levels is not met for two consecutive calendar quarters. Support will be provided based on available resources.

(3) The threshold levels are:

(i) Combined title II and title XVI initial performance accuracy rate—90.6 percent,

(ii) Title II initial processing time—49.5 days, and

(iii) Title XVI initial processing time—57.9 days.

17. New § 404.1662 is added to read as follows:

**§ 404.1662 What support we will provide.**

Performance support may include, but is not limited to, any or all of the following:

(a) An onsite review of cases processed by the State agency emphasizing adherence to written guidelines.

(b) A request that necessary administrative measures be implemented (e.g., filling staffing vacancies, using overtime, assisting with training activities, etc.).

(c) Provisions for Federal personnel to perform onsite reviews, conduct training, or perform other functions needed to improve performance.

(d) Provisions for fiscal aid to allow for overtime, temporary hiring of additional staff, etc., above the authorized budget.

18. Section 404.1670 is revised to read as follows:

**§ 404.1670 General.**

After a State agency falls below two of three established threshold levels, one being performance accuracy, for two consecutive quarters, and after the mandatory performance support period, we will give the State agency a 3-month adjustment period. During this 3-month period we will not require the State agency to meet the threshold levels. Following the adjustment period, if the State agency again falls below two of three threshold levels, one being performance accuracy, in two consecutive quarters during the next 12 months, we will notify the State that we propose to find that the State agency has substantially failed to comply with our standards and advise it that it may request a hearing on that issue. After giving the State notice and an opportunity for a hearing, if it is found that a State agency has substantially failed to make disability determinations consistent with the Act, our regulations or other written guidelines, we will assume partial or complete responsibility for performing the disability determination function after we have complied with §§ 404.1690 and 404.1692.

19. Section 404.1671 is revised to read as follows:

**§ 404.1671 Good cause for not following the Act, our regulations, or other written guidelines.**

If a State has good cause for not following the Act, our regulations, or other written guidelines, we will not find that the State agency has substantially failed to meet our standards. We will determine if good cause exists. Some of the factors relevant to good cause are:

(a) Disasters such as fire, flood, or civil disorder, that—

(1) Require the diversion of significant personnel normally assigned to the disability determination function, or

(2) Destroyed or delayed access to significant records needed to make accurate disability determinations;

(b) Strikes of State agency staff or other government or private personnel necessary to the performance of the disability determination function;

(c) Sudden and unanticipated workload changes which result from changes in Federal law, regulations, or written guidelines, systems modification or systems malfunctions, or rapid, unpredictable caseload growth for a 6-month period or longer.

20. Section 404.1680 is revised to read as follows:

**§ 404.1680 Notice of right to hearing on proposed finding of substantial failure.**

If, following the mandatory performance support period and the 3-month adjustment period, a State agency again falls below two of three threshold levels (one being performance accuracy) in two consecutive quarters in the succeeding 12 months, we will notify the State in writing that we will find that the State agency has substantially failed to meet our standards unless the State submits a written request for a hearing with the Department of Health and Human Services' Departmental Appeals Board within 30 days after receiving the notice. The notice will identify the threshold levels that were not met by the State agency, the period during which the thresholds were not met and the accuracy and processing time levels attained by the State agency during this period. If a hearing is not requested, the State agency will be found to have substantially failed to meet our standards, and we will implement our plans to assume the disability determination function.

21. Section 404.1681 is revised to read as follows:

**§ 404.1681 Disputes on matters other than substantial failure.**

Disputes concerning monetary disallowances will be resolved in proceedings before the Department of Health and Human Services' Departmental Appeals Board if the issue cannot be resolved between us and the State. Disputes other than monetary disallowances will be resolved through an appeal to the Commissioner of Social Security, who will make the final decision. (See § 404.1627)

## PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

1. The authority citation for subpart J of part 416 continues to read as follows:

Authority: Secs. 1102, 1614, 1631, and 1633 of the Social Security Act, 42 U.S.C. 1302, 1382c, 1383 and 1383b.

2. In § 416.1002, the definition of "other written guidelines" is revised to read as follows:

**§ 416.1002 Definitions.**

* * * * *

*Other written guidelines* means written issuances such as Social Security Rulings and memoranda by the Commissioner of Social Security, the Deputy Commissioner for Programs, or the Associate Commissioner for Disability and the procedures, guides, and operating instructions in the Disability Insurance sections of the Program Operations Manual System that are instructive, interpretive, clarifying, and/or administrative and not designated as advisory or discretionary. The purpose of including the foregoing material in the definition is to assure uniform national application of program standards and service delivery to the public.

* * * * *

3. Section 416.1015 is amended by revising paragraph (c) to read as follows:

**§ 416.1015 Making disability determinations.**

* * * * *

(c) Disability determinations will be made by either:

(1) A State agency medical or psychological consultant and a State agency disability examiner or

(2) A State agency disability hearing officer.

See § 416.1016 for the definition of medical or psychological consultant and § 416.1415 for the definition of disability hearing officer. The State agency disability examiner and disability hearing officer must be qualified to interpret and evaluate medical reports and other evidence relating to the claimant's physical or mental impairments and as necessary to determine the capacities of the claimant to perform substantial gainful activity. See § 416.972 for what we mean by substantial gainful activity.

* * * * *

4. Section 416.1020 is amended by revising the section heading and paragraph (a) to read as follows:

**§ 416.1020 General administrative requirements.**

(a) The State will provide the organizational structure, qualified personnel, medical consultant services, and a quality assurance function sufficient to ensure that disability determinations are made accurately and promptly. We may impose specific administrative requirements in these

ares and in those under "Administrative Responsibilities and Requirements" in order to establish uniform, national administrative practices or to correct the areas of deficiencies which may later cause the State to be substantially failing to comply with our regulations or other written guidelines. We will notify the State, in writing, of the administrative requirements being imposed and of any administrative deficiencies it is required to correct. We will allow the State 90 days from the date of this notice to make appropriate corrections. Once corrected, we will monitor the State's administrative practices for 180 days. If the State does not meet the requirements or correct all of the deficiencies, or, if some of the deficiencies recur, we may initiate procedures to determine if the State is substantially failing to follow our regulations or other written guidelines.

* * * * *

5. Section 416.1023 is amended by revising paragraph (c) to read as follows:

**§ 416.1023 Facilities.**

* * * * *

(c) *Access.* The State will permit us access to the premises where the disability determination function is performed and also where it is managed for the purposes of inspecting and obtaining information about the work and activities required by our regulations and assuring compliance with pertinent Federal statutes and regulations. Access includes personal onsite visits and other means, such as telecommunications, of contacting the State agency to obtain information about its functions. We will contact the State agency and give reasonable prior notice of the times and purposes of any visits.

6. Section 416.1026 is amended by revising paragraphs (a) and (e) to read as follows:

**§ 416.1026 Fiscal.**

(a) We will give the State funds, in advance or by way of reimbursement, for necessary costs in making disability determinations under these regulations. Necessary costs are direct as well as indirect costs as defined in 41 CFR part 1–15, subpart 1–15.7 of the Federal Procurement Regulations System for costs incurred before April 1, 1984; and 48 CFR part 31, subpart 31.6 of the Federal Acquisition Regulations System and Federal Management Circular A–74–4 [1] as amended or superseded for costs incurred after March 31, 1984.

* * * * *

(e) After the close of a period for which funds have been made available to the State, the State will submit a report of its expenditures. Based on an audit arranged by the State under Public Law 98–502, the Single Audit Act of 1984, or by the Inspector General of the Department of Health and Human Services or based on an audit or review by the Social Security Administration (see § 416.1027), we will determine whether the expenditures were consistent with cost principles described in 41 CFR part 1–15, subpart 1–15.7 for costs incurred before April 1, 1984; and 48 CFR part 31, subpart 31.6 and Federal Management Circular A–74–4 for costs incurred after March 31, 1984; and in other applicable written guidelines in effect at the time the expenditures were made or incurred.

* * * * *

7. Section 416.1027 is revised to read as follows:

**§ 416.1027 Audits.**

(a) *Audits performed by the State.* (1) *Generally.* Audits of account and records pertaining to the administration of the disability program under the Act, will be performed by the States in accordance with the Single Audit Act of 1984 (Pub. L. 98–502) which establishes audit requirements for States receiving Federal assistance. If the audit performed by the State meets our program requirements, we will accept the findings and recommendations of the audit. The State will make every effort to act upon and resolve any items questioned in the audit.

(2) *Questioned items.* Items questioned as a result of an audit under the Single Audit Act of 1984 of a cross-cutting nature will be resolved by the Department of Health and Human Services, Office of Grant and Contract Financial Management. A cross-cutting issue is one that involves more than one Federal awarding agency. Questioned items affecting only the disability program will be resolved by SSA in accord with paragraph (b)(2) of this section.

(3) *State appeal of audit determinations.* The Office of Grant and Contract Financial Management will notify the State of its determination on questioned cross-cutting items. If the State disagrees with that determination, it may appeal in writing within 60 days of receiving the determination. State appeals of a cross-cutting issue as a result of an audit under the Single Audit Act of 1984 will be made to the Department of Health and Human Services' Departmental Appeals Board. The rules for hearings and appeals are provided in 45 CFR part 16.

(b) *Audits performed by the Secretary.* (1) *Generally.* If the State does not perform an audit under the Single Audit Act of 1984 or the audit performed is not satisfactory for disability program purposes, the books of account and records in the State pertaining to the administration of the disability programs under the Act will be audited by the Department of Health and Human Services' Inspector General or audited or reviewed by SSA as appropriate. These audits or reviews will be conducted to determine whether the expenditures were made for the intended purposes and in amounts necessary for the proper and efficient administration of the disability programs. Audits or reviews will also be made to inspect the work and activities required by the regulations to ensure compliance with pertinent Federal statutes and regulations. The State will make every effort to act upon and resolve any items questioned in an audit or review.

(2) *Questioned items.* Expenditures of State agencies will be audited or reviewed, as appropriate, on the basis of cost principles and written guidelines in effect at the time the expenditures were made or incurred. Both the State and the State agency will be informed and given a full explanation of any items questioned. They will be given reasonable time to explain items questioned. Any explanation furnished by the State or State agency will be given full consideration before a final determination is made on the audit or review report.

(3) *State appeal of audit determinations.* The appropriate Social Security Administration Regional Commissioner will notify the State of his or her determination on the audit or review report. If the State disagrees with that determination, the State may request reconsideration in writing within 60 days of the date of the Regional Commissioner's notice of the determination. The written request may be made, through the Associate Commissioner, Office of Disability, to the Commissioner of Social Security, Room 900, Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235. The Commissioner will make a determination and notify the State of the decision in writing no later than 90 days from the date the Social

[1] The circular is available from the Office of Administration, Publications Unit, Rm. G–236, New Executive Office Bldg., Washington, DC 20503.

Security Administration receives the State's appeal and all supporting documents. The decision by the Commissioner on other than monetary disallowances will be final and binding upon the State. The decision by the Commissioner on monetary disallowances will be final and binding upon the State unless the State appeals the decision in writing to the Department of Health and Human Services' Departmental Appeals Board within 30 days after receiving the Commissioner's decision. See § 416.1083.

8. Section 416.1033 is amended by revising paragraph (b) to read as follows:

**§ 416.1033 Policies and operating instructions.**

* * * * *

(b) The State agency making determinations of disability will comply with our written guidelines that are not designated as advisory or discretionary. (See § 416.1002 for what we mean by written guidelines.)

* * * * *

9. Section 416.1040 is revised to read as follows:

**§ 416.1040 General.**

The following sections provide the procedures and guidelines we use to determine whether the State agency is substantially complying with our regulations and other written guidelines, including meeting established national performance standards. We use performance standards to help assure effective and uniform administration of our disability program and to measure whether the performance of the disability determination function by each State agency is acceptable. Also, the standards are designed to improve overall State agency performance in the disability determination process and to ensure that benefits are made available to all eligible persons in an accurate and efficient manner. We measure the performance of a State agency in two areas—processing time and quality of documentation and decisions on claims. State agency compliance is also judged by State agency adherence to other program requirements.

10. Section 416.1041 is amended by revising paragraph (d) to read as follows:

**§ 416.1041 Standards of performance.**

* * * * *

(d) *Intermediate goals.* Intermediate goals are levels of performance between the threshold levels and the target levels established by our appropriate Regional Commissioner after negotiation with each State agency. The intermediate goals are designed to help the State agencies reach the target levels. Failure to meet these goals is not a cause for considering the State agency to be substantially failing to comply with the performance standards. However, failure to meet the intermediate goals may result in consultation and an offer of optional performance support depending on the availability of our resources.

11. Section 416.1042 is amended by revising paragraph (a) to read as follows:

**§ 416.1042 Processing time standards.**

(a) *General.* Title II processing time refers to the average number of days (including Saturdays, Sundays, and holidays) it takes a State agency to process an initial disability claim from the day the case folder is received in the State agency until the day it is released to us by the State agency. Title XVI processing time refers to the average number of days, including Saturdays, Sundays, and holidays, from the day of receipt of the initial disability claim in the State agency until systems input of a presumptive disability decision or the day the case folder is released to us by the State agency, whichever is earlier.

* * * * *

12. Section 416.1044 is amended by revising paragraph (a) to read as follows:

**§ 416.1044 How and when we determine whether the processing time standards are met.**

(a) *How we determine processing times.* For all initial title II cases, we calculate the mean number of days, including Saturdays, Sundays, and holidays, from the day the case folder is received in the State agency until the day it is released to us by the State agency. For initial title XVI cases, we calculate the mean number of days, including Saturdays, Sundays, and holidays, from the day the case folder is received in the State agency until the day there is systems input of a presumptive disability decision or the day the case folder is released to us by the State agency, whichever is earlier.

* * * * *

13. Section 416.1050 is revised to read as follows:

**§ 416.1050 Action we will take if a State agency does not meet the standards.**

If a State agency does not meet two of the three established threshold levels (one of which must be performance accuracy) for two or more consecutive calendar quarters, we will notify the State agency in writing that it is not meeting the standards. Following our notification, we will provide the State agency appropriate performance support described in §§ 416.1060, 416.1061 and 416.1062 for a period of up to 12 months.

14. The undesignated center heading preceding § 416.1060 is revised to read *Performance Monitoring and Support.*

15. Section 416.1060 is revised to read as follows:

**§ 416.1060 How we will monitor.**

We will regularly analyze State agency combined title II and title XVI initial performance accuracy rate, title II initial processing time, and title XVI initial processing time. Within budgeted resources, we will also routinely conduct fiscal and administrative management reviews and special onsite reviews. A fiscal and administrative management review is a fact-finding mission to review particular aspects of State agency operations. During these reviews we will also review the quality assurance function. This regular monitoring and review program will allow us to determine the progress each State is making and the type and extent of performance support we will provide to help the State progress toward threshold, intermediate, and/or target levels.

16. Section 416.1061 is revised to read as follows:

**§ 416.1061 When we will provide performance support.**

(a) *Optional support.* We may offer, or a State may request, performance support at any time that the regular monitoring and review process reveals that support could enhance performance. The State does not have to be below the initial performance accuracy rate of 90.6 percent to receive performance support. Support will be offered, or granted upon request, based on available resources.

(b) *Mandatory support.* (1) We will provide a State agency with performance support if regular monitoring and review reveal that two of three threshold levels (one of which must be performance accuracy) are not met for two consecutive calendar quarters.

(2) We may also decide to provide a State agency with mandatory performance support if regular monitoring and review reveal that any one of the three threshold levels is not met for two consecutive calendar quarters. Support will be provided based on available resources.

(3) The threshold levels are:

(i) Combined title II and title XVI initial performance accuracy rate—90.6 percent,

(ii) Title II initial processing time—49.5 days, and

(iii) Title XVI initial processing time—57.9 days.

17. New § 416.1062 is added to read as follows:

**§ 416.1062 What support we will provide.**

Performance support may include, but is not limited to, any or all of the following:

(a) An onsite review of cases processed by the State agency emphasizing adherence to written guidelines.

(b) A request that necessary administrative measures be implemented (e.g., filling staffing vacancies, using overtime, assisting with training activities, etc.).

(c) Provisions for Federal personnel to perform onsite reviews, conduct training, or perform other functions needed to improve performance.

(d) Provisions for fiscal aid to allow for overtime, temporary hiring of additional staff, etc., above the authorized budget.

18. Section 416.1070 is revised to read as follows:

**§ 416.1070 General.**

After a State agency falls below two of three established threshold levels, one being performance accuracy, for two consecutive quarters, and after the mandatory performance support period, we will give the State agency a 3-month adjustment period. During this 3-month period we will not require the State agency to meet the threshold levels. Following the adjustment period, if the State agency again falls below two of three threshold levels, one being performance accuracy, in two consecutive quarters during the next 12 months, we will notify the State that we propose to find that the State agency has substantially failed to comply with our standards and advise it that it may request a hearing on that issue. After giving the State notice and an opportunity for a hearing, if it is found that a State agency has substantially failed to make disability determinations consistent with the Act, our regulations, or other written guidelines, we will assume partial or complete responsibility for performing the disability determination function after we have complied with §§ 416.1090 and 416.1092.

19. Section 416.1071 is revised to read as follows:

**§ 416.1071 Good cause for not following the Act, our regulations, or other written guidelines.**

If a State has good cause for not following the Act, our regulations, or other written guidelines, we will not find that the State agency has substantially failed to meet our standards. We will determine if good cause exists. Some of the factors relevant to good cause are:

(a) Disasters such as fire, flood, or civil disorder, that—

(1) Require the diversion of significant personnel normally assigned to the disability determination function, or

(2) Destroyed or delayed access to significant records needed to make accurate disability determinations;

(b) Strikes of State agency staff or other government or private personnel necessary to the performance of the disability determination function;

(c) Sudden and unanticipated workload changes which result from changes in Federal law, regulations, or written guidelines, systems modification or systems malfunctions, or rapid, unpredictable caseload growth for a 6-month period or longer.

20. Section 416.1080 is revised to read as follows:

**§ 416.1080 Notice of right to hearing on proposed finding of substantial failure.**

If, following the mandatory performance support period and the 3-month adjustment period, a State agency again falls below two of three threshold levels (one being performance accuracy) in two consecutive quarters in the succeeding 12 months, we will notify the State in writing that we will find that the State agency has substantially failed to meet our standards unless the State submits a written request for a hearing with the Department of Health and Human Services' Departmental Appeals Board within 30 days after receiving the notice. The notice will identify the threshold levels that were not met by the State agency, the period during which the thresholds were not met, and the accuracy and processing time levels attained by the State agency during this period. If a hearing is not requested, the State agency will be found to have substantially failed to meet our standards, and we will implement our plans to assume the disability determination function.

21. Section 416.1081 is revised to read as follows:

**§ 416.1081 Disputes on matters other than substantial failure.**

Disputes concerning monetary disallowances will be resolved in proceedings before the Department of Health and Human Services, Departmental Appeals Board if the issue cannot be resolved between us and the State. Disputes other than monetary disallowances will be resolved through an appeal to the Commissioner of Social Security, who will make the final decision. (See § 416.1027)

[FR Doc. 91-5708 Filed 3-13-91; 8:45 am]

BILLING CODE 4190-11-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Social Security Administration**

**20 CFR Parts 404 and 416**

**[Regulations No. 4 and 16]**

**RIN 0960-AC60**

## Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Determinations of Disability—Determining State Agency Substantial Failure to Comply with Federal Rules

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Proposed rules.

**SUMMARY:** The proposed rules contain new procedures for determining when a State agency has substantially failed to make disability determinations in accordance with the applicable provisions of title II and title XVI of the Social Security Act (the Act) or the rules that have been issued thereunder. Under the Act, if it is determined that a State agency has substantially failed to make disability determinations in a manner consistent with statutory and regulatory provisions or with other written guidelines of the Secretary of Health and Human Services, the Social Security Administration (SSA), in accordance with sections 221 and 1633 of the Act, must assume the responsibility for making the disability determinations.

**DATES:** To be sure that your comments are considered, we must receive them no later than May 13, 1991.

**ADDRESSES:** Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

**FOR FURTHER INFORMATION CONTACT:** Irving Darrow, Esq., Legal Assistant, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 966-0512.

**SUPPLEMENTARY INFORMATION:** Pursuant to sections 221(a) and 1633 of the Act, State agencies are to make disability determinations not only in accordance with applicable statutory provisions, but also in accordance with regulations and other written guidelines prescribed by the Secretary. These regulations and other written guidelines specify among other things standards of performance and administrative requirements and procedures to be followed by State agencies in making disability determinations. These rules and procedures are required by sections 221 and 1633 of the Act to ensure the effective and uniform administration of the disability programs throughout the United States. Further, if SSA determines, after notice and opportunity for a hearing, that a State agency is substantially failing to make disability determinations in a manner consistent with the Act, our regulations or other written guidelines, SSA must assume responsibility for making the disability determinations. Under the statute and current regulations, SSA may not begin making disability determinations earlier than 180 days after its final determination that the State agency is not in compliance with the Federal statute, our regulations, or other written guidelines, and not until it has developed and initiated all appropriate procedures to implement a plan with respect to any partial or complete assumption of the disability determination function from the State agency. These procedures must include giving a hiring preference to certain State agency employees and receiving a finding from the Secretary of Labor that the State has made fair and equitable arrangements to protect the interests of displaced employees under applicable Federal, State, and local law.

Under our current regulations, we will find that a State agency has substantially failed to make disability determinations in a manner that is consistent with the Act, our regulations or other written guidelines if it has failed to meet national performance standards. Generally, in these situations, the State agency is trying to follow the rules in making disability determinations but does not meet our performance standards. We are proposing to amend our regulations to provide that we will also find that a State agency has substantially failed to make disability determinations in a manner that is consistent with the Act, our rules and guidelines if it has failed to follow the Act, regulations or other written guidelines in carrying out the disability determination functions. For example, a State agency may fail to follow SSA's disbility development and evaluation criteria, or, a State agency may refuse to process a certain class or classes of disability cases which it is required to process.

The Social Security Administration must ensure the effective and uniform administration of the Social Security disability and Supplemental Security Income disability and blindness programs throughout the United States. In order to accomplish this responsibility, SSA must have sufficient regulatory authority to deal with any situation involving State agency failure to follow the Act, our regulations or other written guidelines. This regulatory authority, in turn, should include procedures which are fair and equitable and enable SSA to respond quickly to any issue of State agency failure to follow the Act, our regulations or other written guidelines.

On October 9, 1984, the President signed Public Law 98-460, the Social Security Disability Benefits Reform Act of 1984. One of its provisions was section 17, Measures to Improve Compliance with Federal Law. The purpose of section 17 was to provide a means by which SSA could take prompt and effective action to maintain uniform national administration of the disability programs in the event that SSA determined that a State agency was not in substantial compliance with the Act, our regulations or other written guidelines. Section 17 contained procedures with timeframes for us to follow to determine State compliance and the actions to take if a State was not in compliance. Section 17 was a temporary provision that expired on December 31, 1987. Since this provision has expired, the current regulations need to be amended to provide the standards that SSA will apply to determine if a State agency has substantially failed to make disability determinations in a manner consistent with the Act, our rules and guidelines and the procedures that SSA will follow in making substantial failure determinations. Until these new rules are published as final regulations, we will use the authority granted us by sections 221 and 1633 of the Act to handle compliance issues not covered in the current regulations.

Current regulations specify our responsibilities and those of the States in administering the disability programs. They prescribe standards for accuracy and processing times that State agencies must meet in making disability determinations. They provide the administrative requirements and procedures we and the States must follow in carrying out the disability determination functions.

The current regulations address the issue of State agency "substantial failure" in terms of not meeting national

performance standards for accuracy and processing times. The procedures for finding that a State has substantially failed to comply with the Act, our rules or written guidelines are not invoked until the State agency has failed to meet the performance standards for a specified period, received performance support from SSA, and thereafter remained unable to meet the performance standards. There are no other provisions in the regulations for determining issues involving substantial failure.

The proposed regulations will provide new procedures, including hearing procedures, in matters of substantial failure. They are authorized under sections 221 and 1633 of the Act and the general regulatory authority of the Secretary provided in sections 205, 1102, and 1631 of the Act. The new procedures would be similar to those in the now-expired section 17 of Public Law 98–460 to the extent practicable, given the framework of existing law. They would enable us to reach final determinations on the matter of substantial failure more quickly than we can under the current regulations and yet preserve procedural safeguards for the States. They also provide, as did section 17 of Public Law 98–460, that the final decision of the Secretary will not be subject to judicial review. A summary of these proposed procedural changes follows.

**Procedures for Determining Substantial Failure**

We propose to revise §§ 404.1670 and 416.1070 to make the procedures for determining substantial failure because of failure to meet the performance standards consistent with the proposed hearing procedures in §§ 404.1680 and 416.1080.

In addition, we are proposing to revise §§ 404.1670 and 416.1070 to provide procedures for handling other types of substantial failure. Under the proposed procedures, when we receive information that a State may not be following the Act, our regulations or other written guidelines, we will investigate the matter immediately and, within 21 days, make a preliminary finding as to whether the State substantially failed to meet our standards. If a State is notified of a preliminary finding that it has substantially failed to meet our standards, it will have 21 days from the date of the finding to provide written assurance that the situation will be corrected or to request a hearing. We will monitor the State's performance for 30 days. Regardless of whether a State provides such assurance or requests a hearing, we will make a final determination as to whether the State is or is not substantially failing to comply with the Act, our regulations or other written guidelines within 60 days of our preliminary finding, or within 110 days if the State requests a hearing.

**Hearing on Matters of Substantial Failure**

We propose to revise the hearing procedures in §§ 404.1680 and 416.1080. The current procedures provide that all hearing requests are to be filed with the Department of Health and Human Services' Departmental Appeals Board and that the Departmental Appeals Board will conduct the hearing using their procedures. However, because of the unique nature of determining whether a State agency has substantially failed to make disability determination in accordance with Federal rules, special hearing procedures are needed. Therefore, we are proposing new hearing procedures, to be used by the Departmental Appeals Board, when this issue arises. Under the proposed procedures, within 21 days of the preliminary finding we have made that the State has substantially failed to comply with our rules, the State may request that the Departmental Appeals Board provide a hearing. If the State requests a hearing, the Departmental Appeals Board will, within 50 days of the preliminary finding, notify the State of the time and place of the hearing. The hearing will begin no later than 70 days after the date of the preliminary finding. At the hearing, the State will have a maximum of 3 working days to present evidence and arguments unless in the judgment of the hearing official, more time is necessary. The Departmental Appeals Board will not consider evidence and arguments presented after the hearing. The Departmental Appeals Board will submit written findings and a written recommended determination to the Secretary of Health and Human Services no later than 90 days after the date of the preliminary finding. The recommendation of the Departmental Appeals Board will not be binding on the Secretary; however, it will be considered by the Secretary in reaching the final determination. The Secretary's final determination will not be subject to judicial review.

**Hearings and Appeals Process**

We propose that the Departmental Appeals Board will follow the procedures in §§ 404.1680 and 416.1080 in conducting hearings on matters of State agency substantial failure.

**Regulatory Procedures**

*Executive Order 12291*

The Secretary has determined that this is not a major rule under Executive Order 12291 and does not meet any of the criteria for a major regulation. These regulations only make some modifications to the regulations which implement section 221 of the Act. Therefore, a regulatory impact analysis is not required.

*Regulatory Flexibility Act*

We certify that these regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities, because they only affect State agencies making disability determinations under title II and title XVI of the Act. Prior to June 1981, these same State agencies made these disability determinations under agreements with the Secretary.

*Paperwork Reduction Act of 1980*

Sections 404.1670(c)(3), 404.1680(a), 416.1070(C)(3), and 416.1080(a) of these proposed rules contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we have submitted a copy of these proposed rules to the Office of Management and Budget (OMB) for its review and approval of these information collection requirements. Other organizations and individuals desiring to submit comments should submit them to the agency official designated for this purpose, whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC, ATTN: Desk Officer for HHS. The sections cited above will not be effective until approved by OMB. We will publish a notice in the **Federal Register** informing the public of OMB's action.

The public reporting burden for this collection of information is expected to average 120 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Social Security Administration ATTN: Reports Clearance Officer, 1–A–21 Operations Building, Baltimore, MD 21235, and to the Office of Information and Regulatory Affairs, Office of

Management and Budget, Washington, DC 20504.

(Catalog of Federal Domestic Program Nos. 93.802, Social Security Disability Insurance; 93.807 Supplemental Security Income)

**List of Subjects**

*20 CFR Part 404*

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance.

*20 CFR Part 416*

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: September 13, 1990.

**Gwendolyn S. King,**

*Commissioner of Social Security.*

Approved: January 28, 1991.

**Louis W. Sullivan,**

*Secretary of Health and Human Services.*

Chapter III, parts 404 and 416 of title 20 of the Code of Federal Regulations is amended as shown.

## PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950– )

1. The authority citation for subpart Q of part 404 continues to read as follows:

**Authority:** Secs. 205(a), 221, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 421, and 1302.

2. Section 404.1670 is revised to read as follows:

**§ 404.1670 Determining substantial failure.**

(a) *General.* We must assure the substantial compliance of States with the Act, our regulations, and other written guidelines or assume their disability determination functions. The Act, our regulations, and other written guidelines take precedence over conflicting State laws and regulations. We may find that a State is substantially failing to comply with our rules if it does not meet performance standards as specified in paragraph (b) of this section or does not follow other provisions of the Act, our regulations or other written guidelines as specified in paragraph (c) of this section, without good cause. (See § 404.1671.)

(b) *Failure to meet performance standards.* After a State agency falls below two of the three established threshold levels, one of the two being performance accuracy, for two consecutive quarters, and after the mandatory performance support period, we will give the State agency a 3-month adjustment period. During this 3-month period we will not require the State agency to meet the threshold levels. Following the adjustment period, if the State agency again falls below two of the three threshold levels, one of the two being performance accuracy, in two consecutive quarters during the next 12 months, we will make a preliminary finding that the State has substantially failed to make disability determinations consistent with the Act, our regulations or other written guidelines and advise it that it may request a hearing on this issue within 21 days. We will follow § 404.1680 if the State requests a hearing. If the State does not request a hearing, we will make a final determination on this issue within 60 days of the preliminary finding. If we make a final determination that the State has substantially failed to comply with the Act, our regulations, or other written guidelines, we will assume the disability determination functions of the State after completing the procedures specified in § § 404.1690 through 404.1694.

(c) *Failure to make disability determinations in accordance with the Act, our regulations or written guidelines.* We will take specific steps within definite timeframes before determining that a State is substantially failing to follow the Act, our regulations, or other written guidelines in matters other than meeting performance standards. These steps are:

(1) *Information that a State agency may be substantially failing to comply with our rules.* When we receive information that a State agency may not be making disability determinations in accordance with the Act, our regulations, or other written guidelines, the matter will be investigated, as soon as possible, by our regional office in whose geographical area the State is located to determine if the State is substantially failing to comply with our rules.

(2) *Preliminary finding.* Our regional office will complete its investigation, and we will make a preliminary finding on the matter within 21 days of receipt of the information. On the date that we make such a finding, we will notify the State in writing of the preliminary finding. If we make a preliminary finding that the State agency is substantially failing to comply with the Act, our regulations, or other written guidelines, the notice will include an explanation of the basis for the finding, i.e., it will explain which statute, regulation, or guideline is not being complied with and how we determined the failure of the State agency to comply. We will request assurance from the Governor of the State, or equivalent, or his or her designee, that the situation will be corrected and give the State an opportunity to request a hearing.

(3) *Assurance or hearing request by the State.* Any State notified of a preliminary finding that the State agency is substantially failing to comply with the Act, our rules or other written guidelines will have 21 days, from the date the preliminary finding was made, to:

(i) Provide assurance to us in writing that the situation will be corrected or

(ii) Request a hearing on the issue of substantial failure.

We will follow § 404.1680 if the State requests a hearing.

(4) *Monitoring and final determination.* We will monitor the performance of the State agency for 30 days beginning with the 22nd day after the date of the preliminary finding regardless of whether or not the State provides assurance to us in writing that the situation will be corrected or requests a hearing on the matter of substantial failure. Within 60 days after the date on which the preliminary finding was made, or 110 days after such date if the State requests a hearing, the Secretary, or his or her designee, will make a written final determination as to whether the State agency is substantially failing to comply with the Act, our regulations, or other written guidelines. If the State agency is found to be making disability determinations in a manner that is not consistent with the Act, our regulations, or other written guidelines, we will follow § § 404.1690 through 404.1694 in assuming the disability determination functions of the State.

3. Section 404.1680 is revised to read as follows:

**§ 404.1680 Hearing procedures for substantial failure.**

(a) *Request for hearing.* Within 21 days of receipt of our preliminary finding that a State agency is substantially failing to comply with the Act, our regulations or other written guidelines, the State may request a hearing on this issue. The request must be directed to the Secretary of Health and Human Services. Written requests must be sent to the Secretary of Health and Human Services, Hubert H. Humphrey Building, Washington, DC 20201.

(b) *Action on hearing request.* Within 50 days of the preliminary finding, we will notify the State in writing of the time and the place of the hearing. Such hearing will begin no later than the 70th day after the date of our preliminary finding. The notice will also specify the

statutes, regulations, or other written guidelines which the State may have substantially failed to follow.

(c) *Conduct of hearing.* The hearing will be conducted by the Departmental Appeals Board. The hearing will allow the State to present information and evidence for consideration by the Secretary in reaching the final determination. The State will have a maximum of 3 working days to present evidence and argument unless in the judgment of the Departmental Appeals Board more time is necessary. The Departmental Appeals Board's ruling with respect to evidence, persons who may attend the hearing, and other matters about the conduct of the hearing will not be appealable. The Departmental Appeals Board will submit written findings and a written recommended determination to the Secretary no later than 90 days after the date of the preliminary finding. The finding and recommendation of the Departmental Appeals Board will not be binding on the Secretary, but will be considered by the Secretary along with all the evidence of record in reaching a final determination. Unless the State presents evidence or arguments before or at the hearing, it will not be part of the record, and it will not be considered by the Departmental Appeals Board in making a recommended determination or by the Secretary in making a final determination.

(d) *Final determination.* Within 110 days of the date of the preliminary finding, the Secretary, or his or her designee, will make a written final determination as to whether the State agency is substantially failing to comply with the Act, our regulations or other written guidelines. The decision by the Secretary is not subject to judicial review and will be final and binding upon the State. If the State agency is found to be in substantial failure, we will follow §§ 404.1690 through 404.1694 in assuming the disability determination functions of the State.

4. Section 404.1682 is revised to read as follows:

**§ 404.1682 Who conducts the hearing of fiscal issues.**

If a hearing is required on a fiscal issue, it will be conducted by the Department of Health and Human Services' Departmental Appeals Board.

5. Section 404.1683 is revised to read as follows:

**§ 404.1683 Hearings and appeals process.**

The rules for hearings and appeals before the Departmental Appeals Board on matters other than substantial failure are provided in 45 CFR part 16. The rules for hearings before the Departmental Appeals Board on matters of substantial failure are provided in § 404.1680.

## PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

1. The authority citation for subpart J of part 416 continues to read as follows:

**Authority:** Secs. 1102, 1614, 1631, and 1633, of the Social Security Act, 42 U.S.C. 1302, 1382c, 1383 and 1383b.

2. Section 416.1070 is revised to read as follows:

**§ 416.1070 Determining substantial failure.**

(a) *General.* We must assure the substantial compliance of States with the Act, our regulations, and other written guidelines or assume their disability determination functions. The Act, our regulations, and other written guidelines take precedence over conflicting State laws and regulations. We may find that a State is substantially failing to comply with our rules if it does not meet performance standards as specified in paragraph (b) of this section or does not follow other provisions of the Act, our regulations or other written guidelines as specified in paragraph (c) of this section without good cause. (See § 416.1071.)

(b) *Failure to meet performance standards.* After a State agency falls below two of the three established threshold levels, one of the two being performance accuracy, for two consecutive quarters, and after the mandatory performance support period, we will give the State agency a 3-month adjustment period. During this 3-month period we will not require the State agency to meet the threshold levels. Following the adjustment period, if the State agency again falls below two of the three threshold levels, one of the two being performance accuracy, in two consecutive quarters during the next 12 months, we will make a preliminary finding that the State has substantially failed to make disability determinations consistent with the Act, our regulations, or other written guidelines and advise it that it may request a hearing on this issue within 21 days. We will follow § 416.1080 if the State requests a hearing. If the State does not request a hearing, we will make a final determination on this issue within 60 days of the preliminary finding. If we make a final determination that the State has substantially failed to comply with the Act, our regulations, or other written guidelines, we will assume the disability determination functions of the State after completing the procedures specified in §§ 416.1090 through 416.1094.

(c) *Failure to make disability determinations in accordance with the Act, our regulations, or written guidelines.* We will take specific steps within definite timeframes before determining that a State is substantially failing to follow the Act, our regulations, or other written guidelines in matters other than meeting performance standards. These steps are:

(1) *Information that a State agency may be substantially failing to comply with our rules.* When we receive information that a State agency may not be making disability determinations in accordance with the Act, our regulations, or other written guidelines, the matter will be investigated, as soon as possible, by our regional office in whose geographical area the State is located to determine if the State is substantially failing to comply with our rules.

(2) *Preliminary finding.* Our regional office will complete its investigation, and we will make a preliminary finding on the matter within 21 days of receipt of the information. On the date that we make such finding, we will notify the State in writing of the preliminary finding. If we make a preliminary finding that the State agency is substantially failing to comply with the Act, our regulations, or other written guidelines, the notice will include an explanation of the basis for the finding, i.e., it will explain which statute, regulation, or guideline is not being complied with and how we determined the failure of the State agency to comply. We will request assurance from the Governor of the State, or equivalent, or his or her designee, that the situation will be corrected and give the State an opportunity to request a hearing.

(3) *Assurance or hearing request by the State.* Any State notified of a preliminary finding that the State agency is substantially failing to comply with the Act, our rules or other written guidelines will have 21 days, from the date the preliminary finding was made, to:

(i) Provide assurance to us in writing that the situation will be corrected or

(ii) Request a hearing on the issue of substantial failure.

We will follow § 416.1080 if the State requests a hearing.

(4) *Monitoring and final determination.* We will monitor the performance of the State agency for 30 days beginning with the 22nd day after the date of the preliminary finding regardless of whether or not the State provides assurance to us in writing that

the situation will be corrected or requests a hearing on the matter of substantial failure. Within 60 days after the date on which the preliminary finding was made or 110 days after such date if the State requests a hearing, the Secretary, or his or her designee, will make a written final determination as to whether the State agency is substantially failing to comply with the Act, our regulations, or other written guidelines. If the State agency is found to be making disability determinations in a manner that is not consistent with the Act, our regulations, or other written guidelines, we will follow §§ 416.1090 through 416.1094 in assuming the disability determination functions of the State.

3. Section 416.1080 is revised to read as follows:

**§ 416.1080 Hearing procedures for substantial failure.**

(a) *Request for hearing.* Within 21 days of receipt of our preliminary finding that a State agency is substantially failing to comply with the Act, our regulations, or other written guidelines, the State may request a hearing on this issue. The request must be directed to the Secretary of Health and Human Services. Written requests must be sent to the Secretary of Health and Human Services, Hubert H. Humphrey Building, Washington, DC 21201.

(b) *Action on hearing request.* Within 50 days of the preliminary finding, we will notify the State in writing of the time and the place of the hearing. Such hearing will begin no later than the 70th day after the date of our preliminary finding. The notice will also specify the statutes, regulations, or other written guidelines which the State may have substantially failed to follow.

(c) *Conduct of hearing.* The hearing will be conducted by the Departmental Appeals Board. The hearing will allow the State to present information and evidence for consideration by the Secretary in reaching the final determination. The State will have a maximum of 3 working days to present evidence and argument unless in the judgment of the Departmental Appeals Board, more time is necessary. The Departmental Appeals Board's rulings with respect to evidence, persons who may attend the hearing, and other matters about the conduct of the hearing will not be appealable. The Departmental Appeals Board will submit written findings and a written recommended determination to the Secretary no later than 90 days after the date of the preliminary finding. The findings and recommendation of the Departmental Appeals Board will not be binding on the Secretary, but will be considered by the Secretary along with all the evidence of record in reaching a final determination. Unless the State presents evidence or arguments before or at the hearing, it will not be part of the record, and it will not be considered by the Departmental Appeals Board in making a recommended determination or by the Secretary in making a final determination.

(d) *Final determination.* Within 110 days of the date of the preliminary finding, the Secretary, or his or her designee, will make a written final determination as to whether the State agency is substantially failing to comply with the Act, our regulations or other written guidelines. The decision by the Secretary is not subject to judicial review and will be final and binding upon the State. If the State agency is found to be in substantial failure, we will follow §§ 416.1090 through 416.1094 in assuming the disability determination functions of the State.

4. Section 416.1082 is revised to read as follows:

**§ 416.1082 Who conducts the hearing on fiscal issues.**

If a hearing is required on a fiscal issue, it will be conducted by the Department of Health and Human Services' Departmental Appeals Board.

5. Section 416.1083 is revised to read as follows:

**§ 416.1083 Hearings and appeals process.**

The rules for hearings and appeals before the Departmental Appeals Board on matters other than substantial failure are provided in 45 CFR part 16. The rules for hearings before the Departmental Appeals Board on matters of substantial failure are provided in § 416.1080.

[FR Doc. 91-5707 Filed 3-13-91; 8:45 am]
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federal register

Thursday
March 14, 1991

Part IV

# Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 12, 207, et al.
Accountability in the Provision of HUD Assistance; Final Rule

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Secretary**

**24 CFR Parts 12, 207, 220, 221, 231, 232, 242, and 282**

**[Docket No. R-91-1479; FR-2731-F-02]**

**RIN 2501-AA94**

## Accountability in the Provision of HUD Assistance

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Final rule.

**SUMMARY:** This rule implements section 102 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989). Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department.

**DATES:**

*Effective:* April 15, 1991.

*Implementation:* Sections 12.12 and 12.14(a) apply to all applications for assistance subject to subpart B of part 12 that the Department solicits on or after April 15, 1991.

Section 12.14(b) applies to all decisions to provide or deny assistance subject to subpart B of part 12 that are reached on or after April 15, 1991.

Section 12.16(a) applies to all decisions to provide assistance subject to subpart B of part 12 that are reached on or after April 15, 1991.

*Suspensions:* Sections 12.14(c) and 12.16(b), subpart C and subpart D of part 12, and the amendments made to 24 CFR parts 207, 220, 221, 231, 232, 241, and 882 are suspended and will become effective only as provided by subsequent Notice published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For general questions regarding provisions of this rule requiring notice and documentation of assistance, and notice of funding decisions: Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, room 5262, telephone (202) 708-0294, TDD (202) 708-1112.

For general questions regarding provisions of this rule requiring disclosures by applicants: Arnold J. Haiman, Acting Director, Office of Ethics, room 2158, telephone (202) 708-3815, TDD (202) 708-1112.

For specific questions regarding programs administered by the Assistant Secretary for Community Planning and Development: Don I. Patch, Director, Office of Block Grant Assistance, room 7280, telephone (202) 708-2090, TDD (202) 708-3587.

For specific questions regarding programs administered by the Assistant Secretary for Public and Indian Housing: Casimir Bonkowski, Director, Office of Management and Policy, room 4226, telephone (202) 708-0444, TDD (202) 708-0850.

For specific questions regarding programs administered by the Assistant Secretary for Housing-Federal Housing Commissioner: Michael Hernandez, Special Assistant to the Deputy Assistant Secretary for Multifamily Housing, telephone (202) 708-2495, TDD (202) 708-4594.

For specific questions regarding programs administered by the Assistant Secretary for Fair Housing and Equal Opportunity: Laurence Pearl, Director, Office of Program Standards and Evaluation, room 5226, telephone (202) 708-0288, TDD (202) 708-4594.

All addresses are at the Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. None of the telephone numbers listed above is toll-free.

**SUPPLEMENTARY INFORMATION:**

### Background

This rule implements section 102 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989) (the "Reform Act"). Section 102 contains a number of provisions designed to ensure greater accountability and integrity in the way in which the Department makes assistance available under certain of its programs. Specific features of the rule include:

—For assistance distributed through a competitive process:

—HUD publication of a Notice in the **Federal Register** announcing the availability of the assistance, as well as the application requirements and procedures and the selection criteria that HUD will use in making the assistance available.

—Public inspection of documentation and other information adequate to indicate the basis upon which both HUD and assistance recipients provided or denied the assistance to their applicants.

—Publication in the **Federal Register** of decisions to provide assistance made by the Department,[1] and public notification of such decisions made by States and units of general local government.

—For assistance for specific projects or activities, disclosure by certain applicants seeking assistance from HUD, and from States and units of general local government, of assistance from other government sources to be used with respect to the activities to be carried out with the assistance, the financial interests of persons in the activities, and the sources of funds to be made available for the activities and the uses to which the funds are to be put.

—For HUD assistance for housing projects, a certification by HUD that the assistance will not be more than is necessary to make the assisted activity feasible, after taking into account assistance from other government sources, as well as subsequent adjustments to the assistance based on updated disclosures by applicants.

Note: Section 102(a)(4)(D), which requires **Federal Register** publication of the housing assistance allocations under the "fair share" formula of section 213(d)(1)(A) of the Housing and Community Development Act of 1974, is being implemented by regulatory change to 24 CFR part 791.)

### Public Comments

The Department published a proposed rule to implement section 102 of the Reform Act on June 13, 1990 (55 FR 25036). Comments on the proposed rule were received from two commenters. A discussion of the comments follows:

*Subpart B—Notice and Documentation of Assistance*

1. *Comment:* The commenter questions the basis for the Department's interpretation in the proposed rule that because section 102 is concerned with forms of assistance that involve applications, selection criteria, and decisions to grant or deny assistance, it should not cover formula-driven HUD assistance, "demand" programs, or other non-competitive assistance. The commenter states that the purpose of section 102 is to protect the public and to ensure that HUD informs the public of the rules of the game, so that the public can appropriately apply for HUD assistance and comply with program direction. The commenter suggests the following:

—Section 12.10 (Definitions) should be broadened to encompass the programs described by the direct wording of the statute and should not be limited to competitive programs.

[1] This last feature also applies to assistance that is provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provide on the basis of a competition.

—Section 12.12 (Notice regarding assistance) also should be broadened.
—Section 12.14 (Documentation of applications and decisions) should not exclude particular programs. All HUD assistance, except that which is legislatively or contractually mandated, should be determined based on written applications. The only exceptions should be some formula driven programs.

*Response:* As the commenter points out, the proposed rule would have limited the following features of section 102(a) to assistance distributed through a competitive process:

—HUD publication of a **Federal Register** Notice announcing the availability of the assistance, as well as the application requirements and procedures and the selection criteria that HUD will use in making the assistance available.
—Public inspection of documentation and other information adequate to indicate the basis upon which both HUD and the recipients of the assistance provided or denied the assistance to their applicants.
—Publication in the **Federal Register** of decisions to provide assistance made by the Department, and public notification of such decisions made by States and units of general local government.

The preamble to the proposed rule stated the Department's position as follows:

* * * * *

The first two elements of subpart B (sections 102 (a)(1) through (4)(B) and (E) and (5)) of the Reform Act apply to "assistance under any program or discretionary fund administered by the Secretary." The term is undefined, and requires an interpretation to establish its coverage. Based on an analysis of the relevant provisions of section 102, the Department believes that this term should be limited to discretionary authorities administered by the Department that provide assistance on a competitive basis.

It is true that use of the phrase, "any program or discretionary fund," is very broad, potentially covering any HUD program that provides "assistance." In its widest interpretation, the phrase could apply to discretionary, competitive programs, as well as those authorizing formula grants, FHA mortgage insurance, and GNMA guarantees. In the Department's view, however, the context of section 102 compels a more restrictive reading.

Section 102 appears to be primarily, if not exclusively, concerned with forms of assistance that involve applications, selection criteria, and decisions to grant or deny assistance. These attributes are the traditional hallmarks of discretionary programs that provide assistance on a competitive basis: Programs that announce the availability of assistance, invite applications to request assistance, and make decisions competitively, based on the application and specific selection criteria.

This process is very different from that used in the Department's formula-driven programs, such as the Community Development Block Grant program, the Rental Rehabilitation program, the Emergency Shelter Grants program, and Public Housing Operating Subsidies. These programs provide some or all of their funding on a formula entitlement basis. Although they may use a "statement" or other document in connection with the receipt of the assistance, the document does not serve the primary purpose of an application—to determine eligibility and amount of assistance. In addition, formula programs do not use selection criteria: Recipients' funding is determined by formula, not by competition.

Similar anomalies attend application of section 102 to "demand" programs and to certain other funding actions that are taken without a competition. "Demand" programs, such as FHA mortgage insurance, section 108 loan guarantees, and GNMA's guarantee of Mortgage-Backed Securities, traditionally make "assistance" available to all who meet their eligibility criteria. They do not involve a competition, and, therefore, do not use selection criteria to choose among competing applications.

Other authorities make assistance available with respect to specific projects or activities, but do not use a competition in the provision of the assistance. These include actions that necessarily follow competitive or "demand" program funding decisions almost as a matter of course (*e.g.*, renewals of contracts entered into under section 8 of the United States Housing Act of 1937, and amendments under section 202 of the Housing Act of 1959); the Section 8 Property Disposition program; and the provision of assistance as an incentive in connection with a HUD-approved Plan of Action under title II of the Housing and Community Development Act of 1987. (55 FR 25038)

* * * * *

The Department has reviewed the coverage of section 102(a), and believes that the approach adopted in the proposed rule is the best reading of the statute and accurately reflects congressional intent. Accordingly, the final rule continues to limit section 102(a) to programs that distribute assistance on a competitive basis, with one exception.

The preamble to the proposed rule sought public comment on whether, as a matter of agency discretion, the scope of subpart B should be expanded to include programs that distribute assistance on a discretionary (non-formula, non-"demand") basis, but that do not use a competitive selection process. (See 55 FR 25039.) Although no comments were received on this point, the Department believes that the reform nature of section 102 argues strongly that the Department's decisions to award assistance of this nature be published in the **Federal Register.**

Accordingly, the final rule provides that when HUD awards such assistance, it will publish a notice of the "winners" in the **Federal Register** in accordance with § 12.16(a). The types of programs involved include HUD's research and technology authority, the Fair Housing Assistance program, technical assistance under the Community Development Block Grant (CDBG) program, and assistance for Historically Black Colleges under the CDBG program.

The Department does not propose to extend the reach of section 102(a) farther. We appreciate the commenter's concern that the public be protected and advised of the "rules of the game" so that they can appropriately apply for HUD assistance and comply with program requirements. The public should, however, be well aware of the "rules of the game" for the Department's programs, since all relevant HUD documents and requirements for these programs can be found in the Department's rules, Handbooks, or other written material that is generally available to the public.

In addition, the need for timely information and protection against abuse is most compelling in the case of programs that distribute assistance on a competitive basis. In these programs, applicants are competing for limited resources under strict deadlines, and since there are "losers," a high degree of protection for the competitors is required.

By contrast, formula and "demand" programs contain none of these special circumstances. In formula programs, assistance is provided according to an objective formula. In "demand" programs, applicants need only meet stated eligibility criteria to receive assistance. The Department does not believe that these programs require the kinds of protection afforded by section 102(a).

Finally, the Department believes that non-formula non-"demand" programs fall somewhere between competitive and formula/"demand" programs. Assistance is provided on a discretionary basis to a limited number of applicants, but without a competition. The Department believes that requiring that "winners" of assistance in these programs be published in the **Federal Register** is in the spirit of the "sunshine" of the Reform Act, and provides adequate protection from abuse.

2. *Comment:* A commenter suggested that references in the proposed rule at §§ 12.14(c) and 12.32(a)(5) to the issuance of "administrative instructions" involved matters "too

important" to be issued in the form of administrative instructions, and that notice and comment rule making ought to be provided for these procedures.

*Response:* The Department disagrees. The administrative instructions referenced in proposed § 12.14(c)(1) are subordinate to the substantive requirement, set out in that paragraph, that each recipient of assistance must ensure the sufficiency of information it maintains regarding the award or reallocation of funds provided by HUD. Documentation and information maintained by these primary recipients of assistance funds must be "sufficient to indicate the basis upon which the recipient provided or denied the assistance [to subrecipients]."

Similarly, § 12.14(c)(2) requires that recipients of assistance make applications and related documents available for public inspection; that these materials be made available for at least five years; and that their availability must commence not less than 30 days after the assistance is provided [by the recipient to a subrecipient].

In each of the cited instances, the rule states in clear terms the duty of the primary recipient to make a record of its grant award activities and to maintain it for public inspection. The language referencing HUD administrative instructions merely conveys the Department's intention to provide further administrative details to these recipients concerning the means they will be asked to employ in meeting the regulatory requirements—means that will assist the Department in monitoring compliance with statutorily imposed duties.

Even without the references to administrative instructions, the level of detail in § 12.14(c) is equal to, and parallel to, the comparable regulatory obligations that the rule places on HUD's own grant-administration processes (see § 12.14(b) of the proposed rule).

In the same manner, § 12.32 sets out detailed regulatory requirements for disclosures by applicants—to HUD or to a State or local government, as appropriate—of (1) other governmental assistance received or expected by the applicant; (2) the pecuniary interest of parties in the project; and (3) the intended sources and uses of the funds. A commenter objected to a paragraph pertaining to "administrative instructions" of HUD. The questioned paragraph is a housekeeping provision—directed not at applicants for assistance, but at State and local governments—indicating that HUD will instruct them on administrative details concerning their receipt of the required disclosures from applicants, and concerning the sharing of this required information with HUD.

In each instance, the regulation stands alone without the informational reference to HUD's intention to provide ancillary instructions. Administrative instructions, when issued, will not have the force and effect of law and will merely provide a consensus framework under which HUD and the States and localities can work effectively together to carry out the statutory purpose.

3. *Comment:* The commenter suggests that the requirements of § 12.14(c) apply only to recipients of assistance that are governmental bodies and not to private sector recipients of HUD assistance which, for example, may bid out construction work to several contractors or subcontractors. The commenter doubts that the legislative intent encompassed altering the nature of private business by giving potential liability to private owners that do not employ public contracting procedures. In the commenter's view, § 12.16 (Notice of funding decisions) is limited to the publication of awards of financial assistance arising from "competitive distribution," and, therefore, § 12.14 should be limited also.

*Response:* The statutory basis for § 12.14(c)—section 102(a)(4)(B)(ii)—covers a "State, unit of general local government, or other recipient of assistance." (emphasis supplied) The Department believes that this formulation is clear and unequivocal: it covers all recipients of assistance—both governmental and non-governmental—that receive covered assistance from the initial recipient of assistance on the basis of a competition.

The Department does not agree with the commenter's assertion that § 12.14(c) requires private "recipients" to use public contracting procedures. The statute requires that the documentation and other information regarding each application for assistance be sufficient to indicate the basis on which any award of assistance was made or denied. It is result-driven: It has no effect on the procedures under which recipients distribute the assistance.

It should be noted, however, that there are other requirements that do provide for the use of certain contracting procedures by recipients procuring supplies or services with funds provided by Federal assistance. Attachment O of OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, contains procurement standards for use by nonprofit recipients in establishing their procurement procedures. While an OMB Circular does not have the force and effect of a regulation, many of the Department's regulations incorporate the provisions of Circular A-110 by reference. Procurement requirements for State and local government grantees are codified at 24 CFR part 85, Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments. These directives and regulations—not section 102—establish requirements for contracting procedures.

Finally, §§ 12.14 and 12.16 have the same coverage. Each covers assistance distributed on a competitive basis.

Since publication of the proposed rule, the Cranston-Gonzalez National Affordable Housing Act has been enacted. The new law contains a number of provisions that are subject to subpart B. This rule contains language incorporating into subpart B five of the law's new programs that have been published in the **Federal Register** (56 FR 4412 *et seq.*) They are:

—Shelter Plus Care Assistance under section 837 of the Cranston-Gonzalez National Affordable Housing Act.
—Planning and Implementation Grants for HOPE for Public and Indian Housing Homeownership under title IV, subtitle A, of the Cranston-Gonzalez National Affordable Housing Act.
—Planning and Implementation Grants for HOPE for Homeownership of Multifamily Units under title IV, subtitle B, of the Cranston-Gonzalez National Affordable Housing Act.
—Implementation Grants for HOPE for Homeownership of Single Family Homes under title IV, subtitle C, of the Cranston-Gonzalez National Affordable Housing Act.
—HOPE for Elderly Independence Demonstration under section 803 of the Cranston-Gonzalez National Affordable Housing Act. The applicability of other Cranston-Gonzalez programs, as well as any other new authorities, will be addressed in later rule makings.

*Subpart C—Disclosure by Applicants*

4. *Comment:* The commenter states that this subpart requires a disclosure of information that would normally be prohibited under the Privacy Act of 1974. The commenter questions whether the disclosure requirements are outside the scope of the legislation, or do they preempt it, or should they be proscribed by what is in effect competing law? Also, the commenter extends its question to the effect of the

requirements of the HUD Reform Act, which appears to contain no Federal law preemption language on State or local privacy acts with respect to the record keeping and to the public disclosure and availability requirements of section 102.

*Response*: The Department disagrees with the suggestion that the Privacy Act of 1974 prohibits the disclosure of information submitted to the Department by applicants. The Privacy Act permits an agency to maintain information about individuals that is necessary and relevant to accomplish an agency purpose required to be accomplished by statute or Executive Order. 5 U.S.C. 552a(e)(1). Clearly, section 102(b) requires the disclosure of this information to assist the Department in determining the appropriate amount of Departmental assistance and to ensure that funding decisions are based upon strict eligibility criteria and not the identity of those who have a financial interest in the project.[2]

Similarly, the Department disagrees that public disclosure of information required to be submitted by applicants under subpart C is prohibited under the Privacy Act. The Act, at 5 U.S.C. 552a(b)(3), does not bar disclosure of information which is required to be released under the Freedom of Information Act. In general, the type of information required to be submitted under subpart C (i.e., other governmental assistance, certain information regarding interested parties, and the expected sources and uses of funds) would normally be available to members of the public under the Freedom of Information Act. The Department intends to limit required submissions by applicants to information that can be released to the public under the Freedom of Information Act.

To the extent that section 102 may conflict with State or local privacy act requirements regarding record collection and maintenance, section 102 preempts such laws under the doctrine of Federal preemption. This doctrine was summarized by the United States Supreme Court, as follows:

* * * * *

It is a familiar and well-established principle that the Supremacy Clause, U.S. Const., Art. VI, cl. 2, invalidates state laws that "interfere with, or are contrary to" federal law. *Gibbons* v. *Ogden*, 9 Wheat I, 211 (1824) (Marshall, C.J.). Under the Supremacy Clause, Federal law may supersede state law in several different ways. First, when acting within constitutional limits, Congress is empowered to preempt state law by so stating in express terms. *Jones* v. *Rath Packing Co.*, 430 U.S. 519, 525 (1977). In the absence of express preemptive language, Congress' intent to preempt all state laws in a particular area may be inferred where the scheme of Federal regulation is sufficiently comprehensive to make reasonable the inference that Congress "left no room" for supplementary state regulation. *Rice* v. *Sante Fe Elevator Corp.*, 331 U.S. 213, 230 (1947). Preemption of a whole field also will be inferred where the field is one in which "the Federal interest is so dominant that the Federal system will be assumed to preclude enforcement of state laws on the same subject." Ibid; see Hines v. *Davidowitz*, 312 U.S. 52 (1941).

Even where Congress has not completely displaced state regulation in a specific area, state law is nullified to the extent that it actually conflicts with Federal law. Such a conflict arises when "compliance with both Federal and state regulations is a physical impossibility." *Federal Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132, 142–43 (1963), or when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines* v. *Davidowitz, supra at 67.* (*Hillsborough County, Florida* v. *Automated Medical Laboratories, Inc.*, 471 U.S. 707, 712–13 (1985)).

* * * * *

Under section 4 of Executive Order 12612, Federalism, HUD will construe a Federal statute to preempt State law only when (1) the Federal statute in question contains an express preemption provision; (2) there is some other firm and palpable evidence compelling the conclusion that the Congress intended preemption of State law; or (3) the exercise of State authority directly conflicts with the exercise of Federal authority under the statute. (See Implementation of Executive Order 12612, Federalism, 53 FR 31926 (August 22, 1988).)

Section 102 provides clear and specific authority regarding the collection and maintenance of information concerning other project assistance and persons who have a pecuniary interest in the project. Although section 102 does not contain an express preemption provision, it clearly preempts inconsistent State or local privacy laws under the second two tests noted above.

However, the Department agrees with the suggestion that it cannot mandate disclosure to the public, by States and units of local government, of information collected pursuant to subpart C if disclosure would be inconsistent with State or local law. Accordingly, § 12.32(d)(2) has been revised to require States and units of local government to make information collected pursuant to subpart C available for public inspection, if not inconsistent with State or local law.

5. *Comment:* The commenter asserts that § 12.32(a) states that disclosure must be made concerning applications for specific projects or activities, but that section 102(b) speaks only to "project applications." Therefore, the commenter believes that the scope of the rule is too broad and should be limited to project applications. In the commenter's view, the list of programs covered under § 12.30 should be narrowed to those programs that are project-related, eliminating, for example, Community Development Block Grant Programs, certain forms of section 8 assistance, fair housing programs, and counseling programs.

*Response:* It is true, as the commenter suggests, that the first sentence of section 102(b) provides for the disclosure of information with respect to any application for assistance for a "project application." Standing alone, this iteration is not dispositive. The term, "project," in HUD programs is not necessarily limited to physical structures: it also can include activities. Other provisions of section 102(b), however, make clear that "project" is not to be given the narrow reading suggested by the commenter.

Thus, sections 102(b)(1) and 102(b)(2) call for disclosure of other governmental assistance and pecuniary interests in the "project or activities for which the applicant is seeking assistance." Section 102(b)(2) defines covered persons to mean those with certain involvement in the "project or activity." Section 102(b)(3) requires disclosure of the sources and uses of funds for the "project or activity." (All emphases supplied)

The Department believes that all the provisions of section 102 should be read together. Use of the "project or activities" standard elsewhere in section 102(b) makes clear, in the Department's view, that this standard is what the statute intends.

6. *Comment:* The commenter believes that applications for mortgage insurance under 24 CFR, subtitle B, chapter II should be determined not to be "applications for project assistance." The nature of the mortgage insurance application is substantially different. Furthermore, applications for mortgage insurance are made by approved lenders, not by project owners, and HUD's relationship is with the lender. A mortgagor is not an "applicant," and a mortgagee would not be privy to, nor should a mortgagee be held responsible

[2] The Department intends not only to keep the required information in project and case files, but also to maintain this information in a nationwide electronic data base.

for the accuracy of, information which pertains to its customer (the mortgagor).

*Response:* The Department disagrees with the commenter's assertion that the FHA mortgage insurance programs should be excluded from coverage under section 102(b). Section 102(b) applies to any application for "assistance with the jurisdiction of the Department." Section 102(m)(4) defines "assistance within the jurisdiction of the Department" to include "the insurance or guarantee of a loan, mortgage, or pool of mortgages." The insurance of a loan is, in the Department's view, squarely within the statutory coverage of section 102(b).

The Department believes that FHA mortgage insurance should be handled in the following way for purposes of section 102(b). Since the contractual relationship in the case of FHA insurance is between HUD and the mortgagee, the mortgagee—not the mortgagor—is responsible for submitting the required disclosures to the Department. Nonetheless, the mortgagor is responsible for submitting complete and accurate information to the mortgagee, and will be liable for the civil money penalties and other sanctions provided by section 102 and other applicable law, as appropriate. The mortgagee is not responsible for the contents of the mortgagor's submission, nor is it the guarantor of its accuracy and completeness. It will, however, have the same responsibilities and liability with respect to section 102(b)'s submissions as it does for other information that it supplies to the Department. The final rule contains language clarifying this point.

7. *Comment:* The commenter questions the need for § 12.32(a)(6), which prohibits HUD, or States or units of general local government, from entering into covered contracts, or committing to provide the assistance, until the appropriate disclosures have been made. This is more in the nature of an internal HUD instruction, and would bring into question the validity of contracts entered into by the Department, or other covered entities. Third parties should not be subject to the disclosure requirements of this legislation.

*Response:* The Department believes that the commenter's concern has merit, and has deleted the provision in question from the final rule. Its inclusion in the proposed rule was intended to make clear the Department's firm intent in no case to commit, or to allow States or unit of general local governments to commit, covered assistance, unless all section 102(b)'s disclosures have been provided. This policy will be effectuated through internal HUD staff guidance and administrative instructions to States and units of general local government.

8. *Comment:* The statute requires disclosure of other governmental assistance "expected to be made available" with respect to a project, but the rule would require disclosure of assistance if "there are reasonable grounds to anticipate that the assistance will be forthcoming." The commenter believes these to be two very different standards. The statutory provision relies on a subjective test—expectation of the applicants. The proposed rule provision relies on a test that would permit unnecessary second-guessing by other parties. The commenter believes that the statutory provision is the appropriate one, particularly in a statute that provides for potential penalties.

*Response:* The Department disagrees that the "expected to be made available" standard relies on the expectation of the applicant. Indeed, the standard is expressed in the passive voice, with no indication of whose expectation is determinative. The commenter's approach would essentially make the applicant the sole arbiter of the other government assistance it may receive. This would place enforcement of the statute in the hands of applicants—a result that the Department does not believe Congress intended. The approach adopted in the proposed rule represents the better reading. It attempts to provide objective guidance to help both the Department and the applicant make a fair and honest determination of the other government assistance that should be disclosed under the statute.

9. *Comment:* The statute defines governmental assistance to include, among other things, "tax benefits." The rule merely repeats the statutory definition. The commenter believes that the phrase "tax benefits" requires some explanation. Any real estate transaction contains some form of tax benefits. It should be clarified that only those tax benefits unique to the particular project or type of project need to be disclosed. The commenter stresses that many tax benefits cannot be objectively quantified.

*Response:* The statute simply defines "other government assistance" to include "tax benefits." The Department sees no statutory basis for distinguishing between "tax benefits" that are unique to the project and those that are generally available, such as deductions for depreciation or mortgage interest payments. Accordingly, all forms of "tax benefits" must be disclosed for purposes of subpart C, and will be taken into account in making the certification under subpart D.

The guidelines to be published in the **Federal Register** for use in making the case-by-case decisions referred to in the response to comment 13, below, will address the treatment to be accorded tax benefits under subpart D. It is expected that the assistance adjustments mandated by subpart D will be principally affected by tax credits—not other tax benefits.

Finally, the Department disagrees with the commenter's assertion that tax benefits cannot be objectively quantified. Where tax benefits are involved, the Department intends to solicit information on the nature of both the benefits and the taxpayer. Based on this information, the Department will estimate the value of the benefits for use in adjusting the assistance amount under subpart D. Applicants will be given an opportunity to dispute the estimated amount. The Department believes that this system provides an adequate quantification of the tax benefits involved.

10. *Comment:* The provisions in § 12.32 with respect to disclosure of the pecuniary interest of persons are confusing, and further clarity is needed because of the penal nature of the statute.

With respect to developers, contractors, and consultants (which terms should be defined), the rule seems to refer to "fees being paid." What does this mean? For example, if there is a general contractor who is to build a project pursuant to a $10,000 construction contract, what is to be put down as the pecuniary interest of the general contractor? The full contract amount? The anticipated profit of the contractor? Who is the contractor—the construction company, or its principals? If the answer is the principals, do you disclose the financial data with respect only to the construction company, and, in addition, list the principals, or is there expected to be some further determination of individual "pecuniary interest?" (The answer to this last question cannot be "yes," as it would be impossible to make this determination.)

*Response:* Section 102(b)(2) requires the following disclosures with respect to pecuniary interests:

> The name and pecuniary interest of any person who has a pecuniary interest in the project or activities for which the applicant is seeking assistance. Persons with a pecuniary interest in the project or activity shall include but not be limited to any developers, contractors, or consultants involved in the application for assistance or the planning, development, or implementation of the project or activity.

The Department believes that pecuniary interest means any form of financial involvement with the project or activities. The term clearly includes situations in which an individual or entity has an equity interest in the project, or will share in any profit or resale or any distribution of surplus cash or other project assets. It also includes financial arrangements that do not amount to a financial interest in the project, such as fees for services rendered. This interpretation is reinforced by the statute's reference to activities, such as involvement in the application for assistance or the planning, development, or implementation of the project or activity, as constituting a pecuniary interest under the statute.

In the commenter's example, all of the contractor's fees would be subject to disclosure. The final rule contains language clarifying this point.

The Department does not agree with the commenter's suggestion that the terms, "developer," "contractor," and "consultant," should be defined. The wide range of programs reached by section 102(b) makes their definition under section 102 impracticable. The terms should have the meanings associated with them under each program subject to section 102(b).

Finally, where the "person" making the disclosure is an entity, such as a corporation or partnership, only the entity must disclose the required information. The entity will, however, have to identify certain of its officials, including each officer, director, principal stockholder (as defined in HUD administrative instructions), and other officials (specified in HUD administrative instructions).

This requirement extends only to the identification of the entity's principal officers. It does not require them to disclose any information about themselves, unless, of course, they have a personal interest in the project. This identification requirement is designed to ensure that the Department is aware of those who set the entity's policy and are the most likely to have personal financial interests in the project. The final rule includes language to accomplish this change.

11. *Comment:* With respect to participants, other than developers, consultants and contractors, where does the de minimis standard come into play? Does $50,000 refer only to front-end fees? If not, how is it defined? Does a 10 percent interest relate to a stock or capital interest, to tax benefit allocations, or what?

*Response:* The de minimis standard applies to the sum of all the person's pecuniary interests in the project or activities at the time of the disclosure. The rule provides for updates during the pendency of the application and throughout the period of assistance. The 10 percent threshold is assessed against the previously disclosed pecuniary interests, not the HUD assistance in the project.

12. *Comment:* With respect to § 12.34 (Sanctions and Remedies), the commenter alleges that disparate procedural due process treatment is accorded applicants, depending on the remedy selected by the Department. For example, the rule provides that sanctions against the violator, or the voiding or rescinding of a decision, can only take place after certain procedural steps are taken, including the opportunity for a hearing on the record. Certain other steps, such as "recapturing any funds which have been disbursed" do not contain such safeguards. The commenter suggests that the rule should make clear that no adverse administrative actions can be taken by HUD because of an alleged violation of this section without the alleged violator's having had an opportunity for a hearing following a determination by HUD on the record.

*Response:* In response to the comment, the final rule makes clear that where § 12.34 accords recipients of assistance an opportunity for review and determination on the record after opportunity for hearing, the hearing must be presided over by an administrative law judge appointed under 5 U.S.C. 3105 or detailed to HUD pursuant to 5 U.S.C. 3344. With this exception, the rule simply repeats the remedies standards specified in the statute. It does not purport to prescribe the due process safeguards in specific cases. Before imposing any of these remedies in a given case, the Department will ensure that the due process protections afforded are commensurate with the property right involved.

The final rule makes several other changes to subpart C. First, it makes clear that the amount of assistance that is considered for purposes of determining whether the $200,000 reporting threshold has been met is the total amount provided or to be provided under the program involved. In the case of programs providing long-term budget authority, such as the section 8 program, the amount counted is the total provided in the contract, irrespective of when the assistance is received.

Second, the final rule clarifies the relationship between subparts C and D. The preamble to the proposed rule made clear that HUD would make the certification under subpart D, even if the applicant does not meet the $200,000 threshold for making disclosures under subpart C, and that HUD would request the information concerning other government assistance that is necessary to permit HUD to make the certification. (See 55 FR 25042)

To make this point clear in the regulation, the final rule adds several provisions to ensure that all applicants—whether or not they meet the $200,000 disclosure threshold—must submit such information as HUD deems necessary to make the certification and any subsequent adjustments under subpart D.

Third, the final rule does not contain the definition of the term, "materially," that appeared in subpart C of the proposed rule. The term is not defined in section 102, and was included in the proposed rule only to provide a definition for one of the requirements for the imposition of civil money penalties under 24 CFR part 30. A final rule to implement part 30 rule is currently under development within the Department, and the meaning of the term will be addressed in that rule. Its inclusion in this rule is, accordingly, unnecessary.

Fourth, § 12.32(c) of the proposed rule required applicants to provide HUD updates of any change in other government assistance that exceeds the amount of the assistance that was previously disclosed by $250,000 or by 10 percent of the assistance (whichever is lower). The final rule eliminates this threshold for all HUD programs, except those administered by the Assistant Secretary for Community Planning and Development.

The proposed rule also required applicants to update any change in the sources or uses of funds that exceeds the amount of all previously disclosed sources or uses by $250,000 or by 10 percent of the source or use. The final rule retains this reporting threshold for programs administered by the Assistant Secretary for Community Planning and Development, but eliminates it for other HUD programs, where the assistance involved is a tax credit under Federal, State, and local law.

The thresholds contained in the proposed rule are not required by statute, and the Department believes that for all programs, other than those administered by the Assistant Secretary for Community Planning and Development, it needs all information on changes in other government assistance and, in the case of tax credit projects, all information on changes in the sources and uses of funds to discharge its responsibilities under subpart D. The

threshold referred to in the proposed rule continues in effect for sources and use of funds not involving tax credit projects, except that the final rule contains a dual threshold. Any change in a source or use of funds is subject to disclosure if it exceeds either the amount previously disclosed for that source or use of funds by $250,000 or 10 percent of the amount previously disclosed for that source or use of funds, or the amount previously disclosed for all such sources or uses by $250,000 or 10 percent of all such previously disclosed sources or uses, as appropriate. The differing treatment for programs administered by the Assistant Secretary for Community Planning and Development reflects the Department's view that the thresholds contained in the proposed rule are adequate to ensure that the reform spirit of the Reform Act is carried out for those programs.

Since publication of the proposed rule, the Cranston-Gonzalez National Affordable Housing Act has been enacted. The new law contains a number of provisions that are subject to subpart C. This rule contains language incorporating into subpart C four of the law's new programs that have been published in the **Federal Register** (56 FR 4412 *et seq.*) They are:

—Shelter Plus Care Assistance under section 837 of the Cranston-Gonzalez National Affordable Housing Act.

—Planning and Implementation Grants for HOPE for Public and Indian Housing Homeownership under title IV, subtitle A, of the Cranston-Gonzalez National Affordable Housing Act.

—Planning and Implementation Grants for HOPE for Homeownership of Multifamily Units under title IV, subtitle B, of the Cranston-Gonzalez National Affordable Housing Act.

—HOPE for Elderly Independence Demonstration under section 803 of the Cranston-Gonzalez National Affordable Housing Act.

A fifth program that was recently published in the **Federal Register**, along with the four program mentioned above—the HOPE for Homeownership of Single Family Homes program—is not included in subpart C, since it does not provide assistance for specific projects or activities. The applicability of other Cranston-Gonzalez programs, as well as any other new authorities, will be addressed in later rule makings.

*Subpart D—Limitation on Housing Assistance*

13. *Comment:* The commenter is surprised that the Department has determined to implement this section without the benefit of any rule making. The rule proposed by the Department is simply an authorization for the Department to enter into improper rule making under the guise of administrative guidelines. It is inappropriate and violative of both the letter and spirit of the Administrative Procedure Act.

*Response:* The Department shares the commenter's concern about proceeding to implement section 102(d) through administrative instructions. Section 102(d), however, presents special implementation problems. As stated in the preamble to the proposed rule—

* * * * *

> The Department believes that the question of the amount of assistance necessary to ensure a project's feasibility must be answered in the context of each covered program, and may well vary from project to project. Given this reality, the Department believes that the best approach is to use this rule as an "enabling authority," and as notice to the public of the existence of the certification requirement and of its possible effect on amounts made available under its subsidy programs. Under this approach, the rule would set forth the overall standards—both substantive and procedural—governing section 102(d)'s requirements. Administrative instructions would be issued as necessary for covered programs, specifying the details for implementing the statutory provision for specific housing projects.
>
> Specifically, the rule would require the Department to issue instructions specifying the standards to be followed in making the required statutory determination. The instructions may be on a program-by-program or other basis, and may, in the Department's discretion, establish limits on the amount of assistance within the jurisdiction of the Department that may be used for the housing project, or may provide for the full or partial negotiation of the amount of assistance for individual housing projects. *The Department believes that without this flexibility, the resulting rigidity would jeopardize attainment of the twin objectives of complying with the law and assisting deserving housing projects. Because of the near-limitless number of combinations of subsidies—in the form of grants from other governmental entities, tax credits, or other covered forms of other government assistance—that potentially could be juxtaposed as a result of information received by the Secretary concerning "related assistance," it is impracticable to set out in a rule the manner in which individual determinations regarding limitation of assistance will be made.* (Emphasis supplied) (55 FR 25042–43)

* * * * *

The Department continues to believe that it would be very difficult to propose substantive standards—intended to have the force and effect of law—to establish the circumstances under which HUD will make section 102(d) certifications. These standards would be desirable from the point of view of providing uniformity in decision making and giving program applicants clear guidance, so that they might adjust their applications to increase their likelihood of obtaining the assistance for which they apply. While these are commendable objectives, substantive rules can further these objectives only if the standards are appropriate to the decisions being made. Because the Department has had limited experience with taking account of other governmental assistance in determining the feasibility of a project and the amount of HUD assistance that should be provided, and because these types of decisions are very dependent on the facts relating to the individual project, the Department believe that it is more appropriate, at this time, to develop its standards through case-by-case decision making than through rule making.[3]

Accordingly, the Department intends to proceed by decision making on a case-by-case basis with regard to all aspects of section 102(d) that are not covered by existing regulations. The three departmental organizations that administer programs subject to the provision are the Offices of Housing, Community Planning and Development, and Public and Indian Housing. Each Office will publish in the **Federal Register** guidelines to assist the Department in making the required certification. Since they are guidelines, they would not have the force and effect of law; HUD's decisions could vary from the guidelines based on a consideration of the facts. The guidelines also would not be legally binding on a court reviewing HUD's decision in a given case. The decision making will be made by HUD program officials, and is not subject to 24 CFR part 26, which covers proceedings before a hearing officer. The rationale for each decision would be reduced to writing and made available for public inspection.

After the Department obtains some experience under the case-by-case decision making procedure, the Department may find it useful to promulgate these standards as regulations.

Finally, the preamble to the proposed rule specifically sought comment on the following point:

* * * * *

> Although there is not much legislative history on section 102(d), the two references to the provision in congressional

[3] The proposition that Federal agencies have the discretion to articulate their standards through case-by-case decision making rather than through rule making was set forth in *SEC* v. *Chenery Corp.*, 332 U.S. 194, 203 (1947) and *NLRB* v. *Bell Aerospace Co.*, 267, 290–295 (1974).

consideration of the Reform Act [4] indicate that the provision was primarily intended to address the situation in which developers reaped windfall profits by coupling low-income tax credits with HUD assistance.

Section 102(d) covers tax credits and other tax benefits, but also reaches State and local grant and loan programs. When these latter programs are coupled with HUD assistance, they typically benefit only the residents of the housing: no one outside the project is unjustifiably enriched. An example of this situation would be the desire of a State or unit of general local government to make a grant for certain amenities in a public housing project. In such a case, the opportunity for unjust enrichment or program abuse is non-existent.

In light of the clear intent of section 102(d), the Department requests comments on whether section 102(d) permits different treatment for the government grant/loan situation, and how that different treatment should be expressed in the final rule. (55 FR 25043) (Footnote in original)

* * * * *

The Department concludes that the language of section 102(d) covers all State and local assistance. However, the amount and uses for state and local assistance will be addressed in the context of the case-by-case decision making under section 102(d) and the guidelines referred to above. The treatment of state and local assistance may be different under each set of guidelines to reflect differences in program structures, authorities, and existing requirements.

14. *Comment:* The commenter questions why the Department is insisting on using a "nuclear bomb to swat a now extinct animal." To the extent that windfall profits may have been generated by the combination of tax credits and housing assistance, it appears to have been limited to projects under the Section 8 Moderate Rehabilitation Program. At any rate, Congress has responded to this situation by legislating that the low-income tax credits may not be used in combination with the Section 8 Moderate Rehabilitation Programs.

*Response:* Section 102(d) covers "assistance within the jurisdiction of the Department to any housing project." Section 102(m)(4) defines "assistance within the jurisdiction of the Department" to include any contract, grant, loan, or cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan, mortgage, or a pool of mortgages. The Department lacks authority to provide for lesser coverage in the rule.

15. *Comment:* The commenter believes that it is an impossible task for the contractor who has been engaged by HUD to develop a sophisticated methodology for determining precisely when "necessary assistance" crosses the line into "too much" assistance. The commenter asserts that no system can be developed that can gauge appropriate levels of assistance on other than generalized levels, that any such system would necessarily have to consider the very subjective elements of entrepreneurship and risk involved in real estate development and management.

The commenter suggests that HUD rescind the proposed rule and issue proposed rules with substantially more specificity. HUD should not attempt to administer this program through informal administrative notices.

*Response:* The Department believes that this comment underscores the appropriateness of establishing standards for making these certifications through case-by-case decision making, rather than establishing these standards as substantive regulations. The Department, however, disagrees with the suggestion that it is engaged in measuring entrepreneurial risk. The Department is not attempting, under section 102(d), to step into the shoes of an applicant and determine the subjective issues of whether the project is a good, bad, or indifferent risk to the investor. Rather, the Department looks at the project from the government's point of view and, by taking into account the presence of other governmental risk, determines whether HUD should provide assistance and, if so, how much.

16. *Comment:* At 55 FR 25044, the preamble states—

> If an assistance recipient approaches HUD for an increase in the assistance, the request would trigger the certification aspects of section 102(d). In this case, this would be a "new" request for assistance within the meaning of section 102(d). Again, no retroactivity issue would be raised, since the request would be a "new" one.

The term "increase in assistance" is open to misinterpretation, and the rule should clarify that it would not be triggered by the application of the normal section 8 rent increase process, or by another rent increase process requiring HUD approval.

*Response:* The Department agrees that the term, "increases in assistance," needs more elaboration, and has revised the final rule to be more specific on this point. With the single exception noted below, the final rule makes clear that all increases in previously provided HUD assistance that occur on or after the effective date of this rule are subject to analysis under subpart D. Covered assistance increases include items such as development cost amendments under section 202 of the Housing Act of 1959, budget-based rent increases under the section 8 project-based assistance programs, and contract renewals and extensions under these section 8 authorities. An increase in assistance is covered, irrespective of whether the underlying assistance was initially made available before or after the rule's effectiveness.

The only exception to this coverage is for annual adjustments in section 8 rents under section 8(c)(2)(A)—adjustments pursuant to annual adjustment formula factors.

*—Increases in assistance other than under section 8(c)(2)(A) of the United States Housing Act of 1937.* For increases in HUD assistance (except those under section 8(c)(2)(A)), this coverage reflects the fact that the increases typically involve some "discretion" on HUD's part as to the award or the amount of the assistance, or both. This requirement for HUD action, in the Department's view, makes the assistance "new" assistance that should be subject to review under section 102(d).

This characterization invokes two analyses under section 102(d). First, the assistance is subject to section 102(d)'s certification requirements. Thus, in determining whether to provide the assistance, the Department will consider whether the assistance is the minimum necessary to make the project feasible, taking into account other government assistance. (See § 12.52(a)). In this case, the section 102(d) analysis is triggered by the request for the assistance.

Second, when updates are provided to HUD under § 12.32(c), the changed assistance will be included in the corpus of assistance that is subject to adjustment under $12.52(b). In this case, the section 102(d) review is triggered by the presence of the other government assistance.

With regard to the first (certification) analysis, the Department will (as pointed out in the preamble to the proposed rule) consider all other government assistance involved with the requested assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

[4] 135 Cong. Rec. S16592 (daily ed. Nov. 21, 1989) (Statements of Sens. Cranston and Sasser).

With respect to the second (adjustment) analysis, some examples may help the reader understand how section 102(d) relates to these "discretionary" increase in assistance:

—A section 202 project is approved after the effective date of the rule in the amount of $2 million. The following year, the project receives a development cost amendment of $100,000, and in the year after that, receives "other government assistance" in the form of a $200,000 State grant.

Receipt of the other government assistance triggers a section 102(d) adjustment review under § 12.52(b)(1). The HUD assistance that is subject to adjustment is $2.1 million—the sum of the initial assistance and the contract amendment. If appropriate, HUD's adjustment could consume the amount of the contract amendment and reach into the original loan amount.

—A section 202 project is approved before the effective date of the rule in the amount of $2 million. In the year following the rule's effective date, the project receives a development cost amendment of $100,000, and in the year after that, receives "other government assistance" in the form of a $200,000 State grant.

As with the first example, the existence of the other government assistance triggers section 102(d). In the section 102(d) analysis, the Department will look at the entire $2.1 million HUD assistance, but may only adjust the $100,000—the amount of the contract amendment. The $2 million is not reachable, since it was made available before the effective date of the rule and, therefore, is protected by section 102(n) against retroactive effect.

*—Rent adjustments under section 8(c)(2)(A) of the United States Housing Act of 1937.* As noted above, annual rent adjustments under section 8(c)(2)(A) are not subject to section 102(d). These adjustments represent automatic formula increases in assistance to which owners are entitled. This means that the annual adjustment does not trigger the certification analysis under § 12.52(a)—the assistance will be provided without invoking section 102(d).

Examples will help illustrate the effect of the exclusion where the adjustment authority is triggered by the presence of other government assistance:

—A section 8 project is approved after the effectiveness of the rule in the amount of $2 million. For the next two years, the project receives annual adjustments under section 8(c)(2)(A) totalling an aggregate of $100,000. In the following year, the project receives "other government assistance" of $200,000.

The existence of other government assistance triggers section 102(d). In determining whether to make the section 102(d) adjustment, the Department will consider the entire $2.1 million—the original assistance amount plus the rental adjustments—and may, if appropriate, adjust the entire amount.

In the adjustment context, the trigger is not the receipt of the annual adjustment, but the required update. While the annual adjustment is protected from reduction when it is initially made available, once it has been made available, it loses its character, and merges with the other HUD assistance in the project. Therefore, when other government assistance is reported under the update authority of § 12.32(c), all previous assistance amounts—including those from annual adjustments—are subject to review under § 12.52(b).

—A section 8 project is approved before the effectiveness of the rule in the amount of $2 million. In the next two years after the rule's effectiveness, the project receives annual adjustments under section 8(c)(2)(A) totalling $100,000. In the following year, the project receives "other government assistance" of $200,000.

The other government assistance triggers section 102(d), but there is no assistance to adjust under § 12.52(b). As above, the initial assistance is protected from adjustment, as are the annual adjustments.

Finally, it should be noted that the adjustment authority under § 12.52(b) is triggered by "any changes that are, or should have been, reported under § 12.32(c) * * *." These may be changes in other government assistance, as well as in the sources and uses of funds used, or to be used, for the project.

For purposes of subpart D, the proposed rule limited a "housing project" to residential properties containing five or more dwelling units. This limitation was based on the premise that properties with fewer units do not constitute a "project." Based on further review, the Department has amended the rule to remove the unit limitation on rental properties that receive tax credits under Federal, State, or local law. This change is consistent with the fact that the Internal Revenue Code of 1986 permits a tax credit for a "Qualified Low-Income Housing Project." The Department believes that use of the term, "project," in section 102(d) and the Code argues for comparable treatment under subpart D, but without limitation on the number of units in a "Qualified Low-Income Housing Project." The rule limits the new coverage to rental "projects," since owner-occupied "projects" are not likely to involve the abuses toward which subpart D is primarily directed. Thus, for purposes of subpart D under the final rule, a "housing project" includes (1) any residential property with five or more units and (2) any residential rental property receiving a tax credit under applicable law. All other one-to four-unit dwellings remain outside subpart D's coverage.

*Statutory Interpretation—General*

17. *Comment:* The commenter asserts that there are clear indications that Congress intended that section 102 be interpreted narrowly. The commenter submitted comments on the Department's proposed rule regarding lobbying of HUD personnel (published on June 1, 1990, at 55 FR 22722) and now incorporates by reference those comments submitted previously as they relate to the subject proposed rule. (Below is a summary of those pertinent comments submitted previously.)

The commenter states that it is appropriate that the Department has limited the requirement for HUD publication of a notice of availability of assistance and of the allocation and award of assistance by HUD to competitive programs and authorities. However, the commenter asserts that when the Department turns from the burdens imposed on HUD under section 102(a), to the requirements to be imposed under section 102(b) and section 102(c) on applicants for, and recipients of, assistance within the jurisdiction of the Department with respect to a project, the Department shifts from the narrow construction to a broad construction.

A close reading of section 102 suggests that subsection (b) (Disclosures by Applicants) and subsection (c) (Updating of Disclosure) should be construed as applying to the same persons and types of transactions as subsection (a) (Notice Regarding Assistance).

The Secretary is provided two types of remedies to address violations of subsections (b) and (c)—administrative remedies under subsection (e), and civil money penalties under subsection (f). The administrative remedies in subsection (e) are aimed at the same universe of program activities under subsections (b) and (c) as those program activities which are covered by selection processes which involve the award of assistance—the subject of subsection (a). Subsection (e)'s remedies make no sense at all outside that universe. Note that the preamble is silent on the point, and does not even attempt to reconcile the inconsistencies under the Department's strained, expansive readings of subsections (b) and (c) and the obvious limits of subsection (e).

Indeed, section 102 makes sense as a totality only if strictly construed according to the plain meaning of its words and their context. The section carries forward from subsection (a), through all the succeeding subsections of the section, the same or similar concepts distinguishing assistance provided through a selection process—which is what is covered by the words—from "demand" programs like FHA

mortgage insurance and other assistance not awarded or allocated.

*Response:* The Department disagrees with the commenter. The coverage set forth in the proposed rule for each of the authorities of section 102 is clearly supported and reflects congressional intent.

Section 102 (a) applies to "assistance under any program or discretionary fund administered by the Secretary." Section 102 does not define this term. In deciding to limit the reach of section 102(a) to programs that distribute assistance on a competitive basis, the Department stated:

* * * * *

It is true that use of the phrase, "any program or discretionary fund," is very broad, potentially covering any HUD program that provides "assistance." In its widest interpretation, the phrase could apply to discretionary, competitive programs, as well as those authorizing formula grants, FHA mortgage insurance, and GNMA guarantees. In the Department's view, however, the context of section 102 compels a more restrictive reading.

Section 102 appears to be primarily, if not exclusively, concerned with forms of assistance that involve applications, selection criteria, and decisions to grant or deny assistance. These attributes are the traditional hallmarks of discretionary programs that provide assistance on a competitive basis: Programs that announce the availability of assistance, invite applications to request assistance, and make decisions competitively, based on the application and specific selection criteria. (55 FR 25038)

* * * * *

Sections 102(b) and (c) present a different situation. These sections cover "assistance within the jurisdiction of the Department." This term is both different from that used in section 102(a), and it is defined. Section 102(m)(4) defines it to include any contract, grant, loan, or cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan, mortgage, or a pool of mortgages.

Unlike the contextual considerations that compelled limiting section 102(a) to competitive programs, there is nothing in sections 102(b) and (c) to support limiting their reach to competitive assistance. Indeed, section 102(m)(4)'s explicit inclusion of insurance and guaranty programs—demand programs—makes clear that the coverage of those provisions cannot be limited to competitive assistance.

The commenter argues that the remedy provisions of section 102(e) compel a different result. The Department believes that the commenter's reliance on this provision is misplaced.

It is true that section 102(e) provides remedies in connection with competitive selection processes. The Department sees no reason to infer, particularly because of the above discussion, that section 102(e) was intended to limit the substantive coverage of sections 102(b) and (c).

In the Department's view, section 102(e) provides a set of remedies to be used where a competitive selection is involved. In all other cases, section 102(e) does not apply: otherwise applicable remedies in existing law do. Section 102(e) itself supports this interpretation, since by its own terms, it applies "in the case of a selection."

Thus, the final rule continues the same coverage for sections 102(b) and (c) that was set forth in the proposed rule.

The preamble to the final rule contains the following effective dates:

—Sections 12.12 and 12.14(a) apply to all applications for assistance subject to subpart B that the Department solicits on or after April 15, 1991.

—Section 12.14(b) applies to all decisions to provide or deny assistance subject to subpart B that are reached on or after April 15, 1991.

—Section 12.16(a) applies to all decisions to provide assistance subject to subpart B that are reached on or after April 15, 1991.

—For housing programs administered by the Assistant Secretary for Housing-Federal Housing Commissioner, subpart D and the amendments made to 24 CFR parts 207, 220, 221, 231, 232, 241, and 882 will become effective on the later of April 15, 1991, or the publication of implementing guidelines in the **Federal Register.**

—Sections 12.14(c) and 12.16(b), subpart C, and subpart D (as it applies to other HUD Offices) will become effective only as provided by subsequent Notice published in the **Federal Register.**

The effective dates for §§ 12.12, 12.14 (a) and (b), and 12.16(a) reflect the facts that they are within the Department's control and require little or no additional guidance before they can take effect. The remaining provisions require additional guidance—especially with respect to the responsibilities of State and local governments and other assistance recipients—and, accordingly, their effective dates will be announced separately.

These effective dates replace—without substantive change—the effective date provisions that appeared in the text of the proposed rule. It should be noted that § 12.52 provided that assistance adjustments under § 12.52(b) applied only to assistance that was originally subject to the certification requirements under § 12.5s2(a). The final rule retains this "prospective" application of the adjustment authority in the rule text.

Finally, the preamble to the proposed rule stated that the Department would make conforming changes to the regulations of all the existing programs subject to subparts B, C, and D, either in this final rulemaking or in a subsequent rulemaking. In the interest of speedy implementation of this important reform initiative, the Department will make these conforming changes at a later time. As noted above, however, the final rule does contain conforming amendments to 24 CFR parts 207, 220, 221, 231, 232, 242, and 882. These changes are necessary to implementation of part 12, and could not await further rule making.

Since publication of the proposed rule, the Cranston-Gonzalez National Affordable Housing Act has been enacted. The new law contains a number of provisions that are subject to subpart D. This rule contains language incorporating into subpart D three of the law's new programs that have been published in the **Federal Register** (56 FR 4412 *et seq.*) They are:

—Shelter Plus Care Assistance under section 837 of the Cranston-Gonzalez National Affordable Housing Act.

—Implementation Grants for HOPE for Public and Indian Housing Homeownership under title IV, subtitle A, of the Cranston-Gonzalez National Affordable Housing Act.

—Implementation Grants for HOPE for Homeownership of Multifamily Units under title IV, subtitle B, of the Cranston-Gonzalez National Affordable Housing Act.

Subpart D does not reach Planning Grants for the above two HOPE programs, the HOPE for Homeownership for Single Family Homes program, and the HOPE for Elderly Independence program, since assistance under these programs is not made to specific housing projects. The applicability of other Cranston-Gonzalez programs, as well as any other new authorities, will be addressed in later rule makings.

Finally, the final rule includes in the definition of "Assistance" that is subject to subpart D incentives to extend low-income use under the Emergency Low Income Housing Preservation Act of 1987, as amended.

**Other Matters**

*Environmental review.* A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24

CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street SW., Washington, DC 20410.

*Executive Order 12291.* This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued on February 17, 1981. An analysis of the rule indicates that it will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

*Regulatory Flexibility Act.* In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule will impose additional reporting and disclosure burdens on governmental entities and program applicants, including small entities and applicants. The Department does not believe that these requirements will impose a significant burden. Indeed, virtually all the burdens that they will impose flow directly from the statute—a situation that the Department cannot correct in this rule making.

*Executive Order 12612, Federalism.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism,' has determined that this rule does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government. The rule provides additional reporting and disclosure requirements on States and units of general local government. The Department does not believe these requirements will have the requisite Federalism implications. In any event, they are almost entirely mandated by statute—a situation that the Department cannot correct in this rule making.

In the response to comment 4, above, the Department indicated that the rule could have the effect of preempting certain State or local laws. As noted there, any such preemption accords with the requirements of Executive Order 12612.

*Executive Order 12606. The Family.* The general Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being. The reporting and disclosure requirements of the rule should have little or no positive or negative effect on the family.

*Information collection.* The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and have been assigned OMB control numbers 2535–0101 and 2–02–0377.

*Semiannual agenda.* This rule was listed as item number 1154 in the Department's Semiannual Agenda of Regulations published on October 29, 1990 (55 FR 44530) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

*Catalog of Federal Domestic Assistance.* The Catalog of Federal Domestic Assistance program numbers are 14.120, 14.122, 14.129, 14.135, 14.139, 14.151, 14.157, 14.164, 14.169, 14.170, 14.177, 14.178, 14.179, 14.180, 14.219, 14.220, 14.225, 14.230, 14.231, 14.401, 14.409, 14.410, 14.506, 14.850, 14.852, and 14.853.

**List of Subjects in 24 CFR**

*Part 12*

Administrative practice and procedure, Loan programs: Housing and community development, Grant programs: Housing and community development, Reporting and record keeping requirements.

*Part 207*

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

*Part 220*

Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Urban renewal.

*Part 221*

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

*Part 231*

Aged, Mortgage insurance, Reporting and recordkeeping requirements.

*Part 232*

Fire prevention, Health facilities, Loan programs—health, Loan programs—housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

*Part 241*

Energy conservation, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

*Part 882*

Grant programs—housing and community development, Lead poisoning, Manufactured homes, Homeless, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, title 24 of the Code of Federal Regulations is amended as follows:

1. A new part 12 is added to read as follows:

## PART 12—ACCOUNTABILITY IN THE PROVISION OF HUD ASSISTANCE

**Subpart A—General**



**Subpart B—Notice and Documentation of Assistance**



**Subpart C—Disclosure by Applicants**



**Subpart D—Limitation on Housing Assistance**



**Authority:** Sec. 102, Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

### Subpart A—General

#### § 12.1 Purpose.

This part implements section 102 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989). Section 102 contains a number of provisions designed to ensure greater accountability and integrity in the way in which the Department makes

assistance available under certain of its programs. Specific features of this part include the following:

(a) *For assistance distributed through a competitive process:*

(1) HUD publication of a Notice in the **Federal Register** announcing the availability of the assistance, as well as the application requirements and procedures and the selection criteria that HUD will use in making the assistance available.

(2) Public inspection of documentation and other information adequate to indicate the basis upon which both HUD and the recipients of the assistance provided or denied the assistance to their applicants.

(3) Publication in the **Federal Register** of decisions to provide assistance made by the Department, and public notification of such decisions made by States and units of general local government. (The HUD publication feature also applies to assistance that HUD provides through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.) (subpart B)

(b) *For assistance for specific projects or activities:* Disclosure by certain applicants seeking assistance from HUD, and from States and units of general local government, of other government assistance to be used with respect to the activities to be carried out with the assistance, the financial interests of persons in the activities, and the sources of funds to be made available for the activities and the uses to which the funds are to be put. (subpart C)

(c) *For HUD assistance for housing projects:* Certification by HUD that the assistance will not be more than is necessary to make the assisted activity feasible after taking into account assistance from other government sources, as well as subsequent adjustments to the assistance based on updated disclosures from applicants. (subpart D) (Section 102(a)(4)(D), which requires **Federal Register** publication of the housing assistance allocations under the "fair share" formula of section 213(d)(1)(A) of the Housing and Community Development Act of 1974, is implemented in 24 CFR part 791.)

**§ 12.3 Definitions.**

As used in this part:

*Indian* means any person recognized as being an Indian or Alaska Native by an Indian tribe, the Federal government, or any State.

*Indian Housing Authority* means any entity that—

(1) Is authorized to engage or assist in the development or operation of lower income housing for Indians; and

(2) Is established—

(i) By exercise of the power of self-government of an Indian tribe independent of State law; or

(ii) By operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

*Indian tribe* means any tribe, band, pueblo, group, community, or nation of Indians or Alaska Natives.

*HUD* or *Department* means the United States Department of Housing and Urban Development.

*Person* means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other governmental entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

*Public housing agency* means any State, county, municipality, or other governmental entity or public body, or agency or instrumentality thereof, that is authorized to engage or assist in the development or operation of lower income housing. The term includes an Indian Housing Authority.

*State* means the several States, including a State Housing Finance Agency, and the Commonwealth of Puerto Rico.

*Unit of general local government* means any city, county, town, township, parish, village, or other general purpose political subdivision of a State; Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa, or a general purpose political subdivision thereof; a combination of such political subdivisions recognized by HUD; the District of Columbia; and the Trust Territory of the Pacific Islands.

**§ 12.5 Waivers.**

(a) *Waiver of non-statutory provisions.* Upon determination of good cause, the Secretary of HUD may waive any provision of this part that is not required by law.

(b) *Waiver of statutory provisions for emergencies.* The Secretary of HUD may waive the requirements of §§ 12.12 (a) and (b), if the Secretary determines that the waiver is required for appropriate response to an emergency. Not less than 30 calendar days after granting a waiver under this paragraph (b), the Secretary will publish a Notice in the **Federal Register** stating the reasons for the waiver.

## Subpart B—Notice and Documentation of Assistance

**§ 12.10 Definitions.**

As used in this subpart:

*Assistance subject to this subpart* or *assistance* means any contract, grant, loan, or cooperative agreement, or other form of assistance, under any program administered by the Department that provides by statute, regulation, or otherwise, for the competitive distribution of the assistance. The term does not include contracts, such as procurement contracts, that are subject to the Federal Acquisition Regulation (FAR) (48 CFR chapter 1). The term includes those elements of the following programs that provide for the competitive distribution of assistance (HUD will add other programs, as appropriate):

(1) Section 312 Rehabilitation Loans under 24 CFR part 510 (except loan amounts less than $200,000 and loans for single family properties).

(2) Rental Rehabilitation Grants under 24 CFR parts 511 (only HUD-administered grants under subpart F and technical assistance under Subpart A).

(3) The following programs under title I of the Housing and Community Development Act of 1974:

(i) Community Development Block Grants under 24 CFR part 570 (only the HUD-administered Small Cities program under subpart F),

(ii) Special Purpose Grants (only technical assistance and assistance for Historically Black Colleges) under section 105 of the Department of Housing and Urban Development Reform Act of 1989,

(iii) The Work Study program under section 107(c) of the Housing and Community Development Act of 1974, and

(iv) Community Development Block Grants to Indian Tribes under title I of the Housing and Community Development Act of 1974.

(4) Emergency Shelter Grants under 24 CFR part 576 (only HUD reallocations under §§ 576.63 through 576.67).

(5) Transitional Housing under 24 CFR part 577.

(6) Permanent Housing for Handicapped Homeless Persons under 24 CFR part 578.

(7) Section 8 Housing Assistance Payments—Existing Housing and Moderate Rehabilitation under 24 CFR part 882 (including the Moderate Rehabilitation program for Single Room Occupancy Dwellings for the Homeless under subpart H).

(8) Loans for Housing for the Elderly or Handicapped under section 202 of the

Housing Act of 1959 (including operating assistance for Housing for the Handicapped, as authorized by section 162 of the Housing and Community Development Act of 1987, and Seed Money Loans under section 106(b) of the Housing and Urban Development Act of 1968).

(9) Section 8 Housing Assistance Payments—Loan Management Set-Aside under 24 CFR part 886, subpart A (except when used as an incentive in connection with an approved Plan of Action under the Emergency Low Income Housing Preservation Act of 1987, as amended.)

(10) Flexible Subsidy under 24 CFR part 219—both Operating Assistance under subpart B and Capital Improvement Loans under subpart C (except when used as an incentive in connection with an approved Plan of Action under the Emergency Low Income Housing Preservation Act of 1987, as amended).

(11) Housing Vouchers under 24 CFR part 887.

(12) Low-Rent Housing Opportunities under 24 CFR 904.

(13) Indian Housing under 24 CFR part 905.

(14) Public Housing Development under 24 CFR part 941.

(15) Comprehensive Improvement Assistance under 24 CFR part 968.

(16) Resident Management under 24 CFR part 964, subpart C.

(17) Neighborhood Development Demonstration under section 123 of the Housing and Urban-Rural Recovery Act of 1983.

(18) Nehemiah Grants under 24 CFR part 280.

(19) Research and Technology Grants under title V of the Housing and Urban Development Act of 1970.

(20) Congregate Services under the Congregate Housing Services Act of 1978.

(21) Counseling under section 106 of the Housing and Urban Development Act of 1968.

(22) Fair Housing Initiatives under 24 CFR part 125.

(23) Public Housing Drug Elimination Grants under section 5129 of the Anti-Drug Abuse Act of 1988.

(24) Fair Housing Assistance under 24 CFR part 111.

(25) Public Housing Early Childhood Development Grants under section 222 of the Housing and Urban-Rural Recovery Act of 1983.

(26) Supplemental Assistance for Facilities to Assist the Homeless under 24 CFR part 579.

(27) Shelter Plus Care Assistance under section 837 of the Cranston-Gonzalez National Affordable Housing Act.

(28) Planning and Implementation Grants for HOPE for Public and Indian Housing Homeownership under title IV, subtitle A, of the Cranston-Gonzalez National Affordable Housing Act.

(29) Planning and Implementation Grants for HOPE for Homeownership of Multifamily Units under title IV, subtitle B, of the Cranston-Gonzalez National Affordable Housing Act.

(30) Implementation Grants for HOPE for Homeownership of Single Family Homes under title IV, subtitle C, of the Cranston-Gonzalez National Affordable Housing Act.

(31) HOPE for Elderly Independence Demonstration under section 803 of the Cranston-Gonzalez National Affordable Housing Act. For purposes of § 12.16(a), the term also includes assistance that is provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition. Assistance referred to in the preceding sentence includes discretionary, noncompetitive assistance provided under the following programs: Research and Technology Grants under title V of the Housing and Urban Development Act of 1970, Fair Housing Assistance under 24 CFR part 111, technical assistance under section 105 of the Department of Housing and Urban Development Reform Act of 1989, and assistance for Historically Black Colleges under section 105 of the Department of Housing and Urban Development Reform Act of 1989. (HUD will add other programs, as appropriate.)

*Recipient* or *recipient of assistance* means a person that receives assistance subject to this subpart.

**§ 12.12 Notice regarding assistance.**

(a) *Notice of availability of assistance and application requirements and procedures.* (1) *In general.* Before the Department solicits an application for assistance subject to this subpart, it will publish a Notice in the **Federal Register** containing:

(i) Notification of the availability of the assistance;

(ii) A description of the application requirements and procedures for applying for the assistance; and

(iii) Any deadlines relating to the award or allocation of the assistance.

(2) *Help in applying.* The description referred to in paragraph (a)(1)(ii) will be designed to help applicants apply for the assistance involved.

(b) *Selection criteria.* (1) *In general.* Not less than 30 calendar days before any deadline by which applications must be submitted to the Department for assistance subject to this subpart, the Department will publish a Notice in the **Federal Register** specifying the criteria by which selection for the assistance will be made. The Notice will include the weight or relative importance of each selection criterion, as well as any other factors that may affect the selection of recipients.

(2) *Nature of selection criteria.* HUD will include in the selection criteria referred to in paragraph (b)(1) any objective measures of housing and other need, project merit, or efficient use of resources that HUD determines are appropriate and consistent with the statute under which the assistance is made available.

(c) *Content of notice.* HUD may, consistent with the requirements of this section, include the material required by paragraphs (a) and (b) of this section in the same **Federal Register** document.

**§ 12.14 Documentation of applications and decisions.**

(a) *Written applications.* HUD will award or allocate assistance subject to this subpart only in response to a written application in a form or format approved in advance, except where other award or allocation procedures are specified by statute.

(b) *Documentation of decisions on applications to HUD.* (1) *Basis for provision or denial of assistance.* HUD will ensure that documentation and other information regarding each application submitted to HUD for assistance subject to this subpart are sufficient to indicate the basis on which HUD provided or denied the assistance.

(2) *Public inspection.* HUD will make available for public inspection each application, and all related documentation and other information referred to in paragraph (b)(1) of this section, including any written indication of support that HUD received for an applicant's submission. Public inspection will be made available for a period of at least five years, beginning not less than 30 calendar days after the date on which the assistance is provided. HUD will announce in the **Federal Register** where and how the public may inspect this information.

(c) *Documentation of decisions on applications to HUD recipients.* (1) *Basis for provision or denial of assistance.* Each recipient of assistance must ensure, in accordance with administrative instructions issued by HUD, that documentation and other information regarding any application submitted by a subrecipient to the recipient for a subsequent award or

allocation of the assistance by a competition are sufficient to indicate the basis upon which the recipient provided or denied the assistance.

(2) *Public inspection.* Each recipient of assistance must, in accordance with administrative instructions issued by HUD, make available for public inspection each application, and all related documentation and other information referred to in paragraph (c)(1) of this section, including any written indication of support that the recipient received for an applicant's submission. Public inspection must be made available for a period of at least five years, beginning not less than 30 calendar days after the date on which the assistance involved is provided.

**§ 12.16 Notice of funding decisions.**

(a) *Notice by HUD.* HUD will publish a Notice in the Federal Register at least quarterly to notify the public, in accordance with paragraph (c) of this section of all decisions made by the Department to provide assistance subject to this subpart since the last notification.

(b) *Notice by States and units of general local government.* Each State and unit of general local government must, in accordance with paragraph (c) of this section and administrative instructions issued by HUD, notify the public of any decision by the State or unit of general local government to award or allocate the proceeds of assistance subject to this subpart by a competition to a subsequent recipient.

(c) *Content of notice.* The notification referred to in paragraphs (a) and (b) of this section will include:

(1) The name and address of each recipient of assistance;

(2) The name or other means of identifying the project, activity, or undertaking for each such recipient;

(3) The dollar amount of the assistance for each project, activity, or undertaking;

(4) The citation to the statutory, regulatory, or other criteria under which the decision to provide assistance was made; and

(5) Such additional information as HUD (or in accordance with administrative instructions issued by HUD, the State or unit of general local government) deems appropriate for a clear and full understanding of the funding decision.

## Subpart C—Disclosure By Applicants

**§ 12.30 Definitions.**

As used in this subpart:

*Assistance subject to this subpart* or *assistance* means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. For purposes of § 12.32, if the assistance is provided to a State or to a unit of general local government, the term also includes the subsequent award or allocation of the assistance by the State or by the unit of general local government to a subrecipient. The term does not include contracts, such as procurement contracts, that are subject to the Federal Acquisition Regulation (FAR) (48 CFR chapter 1). The term includes those elements of the following programs that make assistance available for specific projects or activities (HUD will add other programs, as appropriate):

(1) Section 312 Rehabilitation Loans under 24 CFR part 510, except loans for single family properties.

(2) Applications for grant amounts for a specific project or activity under the Rental Rehabilitation Grant program under 24 CFR part 511 made to:

(i) A State grantee under subpart F;

(ii) A unit of general local government or a consortium of units of general local government receiving funds from a State or directly from HUD whether or not by formula) under subparts D, F, and G; and

(iii) HUD, for technical assistance under § 511.3.

(Excludes formula distributions to States, units of general local government, or consortia of units of general local government under subparts D and G, within-year reallocations under subpart D, and the HUD-administered Small Cities program under subpart F.)

(3) Applications for grant amounts for a specific project or activity under title I of the Housing and Community Development Act of 1974 made to:

(i) HUD, for a Special Purpose Grant under section 105 of the Department of Housing and Urban Development Reform Act of 1989 for technical assistance, the Work Study program, or Historically Black colleges,

(ii) HUD, for a loan guarantee under 24 CFR part 570, subpart M;

(iii) HUD, for a grant to an Indian tribe under title I of the Housing and Community Development Act of 1974; and

(iv) HUD, for a grant under the HUD-administered Small Cities program under 24 CFR part 570, subpart F; and

(v) A State or unit of general local government under 24 CFR part 570.

(Excludes formula distributions by HUD to States and units of general local government under 24 CFR part 570, and Special Purpose Grants by HUD to Insular Areas or for the correction of formula errors under section 105 of the Department of Housing and Urban Development Reform Act of 1989.)

(4) Applications for grant amounts for a specific project or activity under the Emergency Shelter Grants program under 24 CFR part 576 made to a State or to a unit of general local government, including a Territory.

(Excludes formula distributions to States and units of general local government (including Territories); reallocations to States, units of general local government (including Territories), and non-profit organizations; and applications to an entity other than HUD or a State or unit of general local government.)

(5) Transitional Housing under 24 CFR part 577.

(6) Permanent Housing for Handicapped Homeless Persons under 24 CFR part 578.

(7) Section 8 Housing Assistance Payments (only project-based housing under the Existing Housing and Moderate Rehabilitation programs under 24 CFR part 882, including the Moderate Rehabilitation program for Single Room Occupancy Dwellings for the Homeless under subpart H).

(8) Section 8 Housing Assistance Payments for Housing for the Elderly or Handicapped under 24 CFR part 885.

(9) Loans for Housing for the Elderly or Handicapped under section 202 of the Housing Act of 1959 (including operating assistance for Housing for the Handicapped under section 162 of the Housing and Community Development Act of 1987 and Seed Money Loans under section 106(b) of the Housing and Urban Development Act of 1968).

(10) Section 8 Housing Assistance Payments—Special Allocations—under 24 CFR part 886.

(11) Flexible Subsidy under 24 CFR part 219—both Operating Assistance under subpart B and Capital Improvement Loans under subpart C.

(12) Low-Rent Housing Opportunities under 24 CFR part 904.

(13) Indian Housing under 24 CFR part 905.

(14) Public Housing Development under 24 CFR part 941.

(15) Comprehensive Improvement Assistance under 24 CFR part 968.

(16) Resident Management under 24 CFR part 964, subpart C.

(17) Neighborhood Development Demonstration under section 123 of the Housing and Urban-Rural Recovery Act of 1983.

(18) Nehemiah Grants under 24 CFR part 280.

(19) Research and Technology Grants under title V of the Housing and Urban Development Act of 1970.

(20) Congregate Services under the Congregate Housing Services Act of 1978.

(21) Counseling under section 106 of the Housing and Urban Development Act of 1968.

(22) Fair Housing Initiatives under 24 CFR part 125.

(23) Public Housing Drug Elimination Grants under section 5129 of the Anti-Drug Abuse Act of 1988.

(24) Fair Housing Assistance under 24 CFR part 111.

(25) Public Housing Early Childhood Development Grants under section 222 of the Housing and Urban-Rural Recovery Act of 1983.

(26) Mortgage Insurance under 24 CFR subtitle B, chapter II (only multifamily and non-residential).

(27) Supplemental Assistance for Facilities to Assist the Homeless under 24 CFR part 579.

(28) Shelter Plus Care Assistance under section 837 of the Cranston-Gonzalez National Affordable Housing Act.

(29) Planning and Implementation Grants for HOPE for Public and Indian Housing Homeownership under title IV, subtitle A, of the Cranston-Gonzalez National Affordable Housing Act.

(30) Planning and Implementation Grants for HOPE for Homeownership of Multifamily Units under title IV, subtitle B, of the Cranston-Gonzalez National Affordable Housing Act.

(31) HOPE for Elderly Independence Demonstration under section 803 of the Cranston-Gonzalez National Affordable Housing Act.

*Knowingly* means having actual knowledge of, or acting with deliberate ignorance of or reckless disregard for, the requirements of § 12.32 (a), (b), or (c).

*Other government assistance* includes any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal Government, a State, or a unit of general local government, or any agency or instrumentality thereof.

**§ 12.32 Disclosure by applicants.**

(a) *Required disclosures.* (1) *In general.* Each applicant that submits an application for assistance subject to this subpart to HUD, or to a State or to a unit of general local government, for a specific project or activity must make the disclosures referred to in paragraph (b)(1) of this section, if the applicant has received, or can reasonably be expected to receive, an aggregate amount of all forms of such assistance in excess of $200,000 during the Federal fiscal year in which the application is submitted.

(2) *Receipt and reasonable expectation of receipt.* For purposes of determining the threshold of applicability under paragraph (a)(1) of this section, an applicant will be deemed to have received, or to have a reasonable expectation of receiving, the following amounts of assistance subject to this subpart:

(i) To the extent known at the time of the current application, the total amount of such assistance received during the Federal fiscal year pursuant to an application submitted within that year;

(ii) The total amount requested in any application for such assistance, including the current application, that was submitted during the Federal fiscal year and that is pending before the Department or before any other entity, whether or not the assistance is expected to be received during the fiscal year; and

(iii) The total amount of any such assistance that is likely during the Federal fiscal year—

(A) To be made available on a formula basis to the applicant by the Department or by any other entity; or

(B) To be generated in the form of program income, as defined in 24 CFR part 85.

(3) *Amount received or expected to be received.* For purposes of paragraph (a)(2) of this section, in the case of assistance that will be provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the term "total amount" includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.

(4) *Certain applicants.* (i) Each applicant that submits an application under paragraph (a)(1) of this section to an entity other than HUD, a State, or a unit of general local government, must make the required disclosures to HUD, if the application is required by statute or regulation to be submitted to HUD for approval, environmental review, rent determinations, or for any other purpose.

(ii) In the case of Mortgage Insurance under 24 CFR subtitle B, chapter II, the mortgagor is responsible for making the disclosures required under this section, and the mortgagee is responsible for furnishing the mortgagor's disclosures to the Department.

(5) *Instructions to States and units of general local government.* HUD will issue administrative instructions to States and units of general local government with respect to their responsibilities under this paragraph (a), including the timing of the required disclosures for applicants, and the timing and content of reporting those disclosures to HUD.

(6) *Additional disclosures under subpart D.* If an applicant does not meet the assistance threshold under paragraph (a)(1) of this section, it must make the additional disclosures under § 12.52(d).

(b)(1) *Content of disclosure.* Applicants that meet the assistance threshold under paragraph (a)(1) of this section must disclose the following information:

(i) *Other government assistance.* Any other government assistance that is, or is expected to be, made available with respect to the project or activities for which the assistance is sought.

(ii) *Interested parties.* The name and pecuniary interest of—

(A) Any developer, contractor, or consultant involved in the application for the assistance, or in the planning, development, or implementation of the project or activity involved; and

(B) Any other person who has a pecuniary interest in the project or activities for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

If the person under this paragraph (b)(1)(ii) is an entity, the disclosure must include an identification of each officer, director, principal stockholder (as specified in HUD Administrative instructions), or other official of the entity (as specified in HUD, administrative instructions). For purposes of this paragraph (b)(1)(ii)(B), a pecuniary interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activities, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activities, or receives compensation for any goods or services provided in connection with the project or activities.

(iii) *Sources and uses of funds.* A report, as provided in administrative instructions issued by HUD, specifying the expected sources of funds that are to be made available for the project or activity, and the expected uses to which those funds are to be put. The report must identify the gross amount of funds from all sources, including (but not limited to):

(A) Both governmental and non-governmental sources of funds; and

(B) Private capital resulting from tax benefits.

(iv) *Additional disclosures for purposes of subpart D.* If an applicant discloses other government assistance under paragraph (b)(1)(i) of this section, it must submit such other information as HUD deems necessary to make the certification under subpart D. If the applicant meets the assistance threshold under paragraph (a)(1) of this section, but does not disclose other government assistance, it must certify, in such form and manner as the Department may prescribe, that no other government assistance is, or is expected to be, made available with respect to the project or activities for which the assistance is sought.

(2) *Definitions.* (i) For purposes of paragraph (b)(1)(i) of this section, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there is reasonable grounds to anticipate that the assistance will be forthcoming.

(ii) For purposes of paragraph (b)(1)(ii) of this section, residency of an individual in housing for which assistance subject to this subpart is being sought is not, by itself, considered a pecuniary interest.

(iii) For purposes of paragraph (b)(1)(iii) of this section, a source of funds is expected to be made available, and a use of funds is expected to be put to a particular purpose, if, based on an assessment of all the circumstances involved, there is reasonable grounds to anticipate that the source or use will be forthcoming.

(c) *Updating disclosures.* (1) *In general.* During the period in which an application for assistance subject to this subpart is pending, or in which the assistance is being provided, the applicant must report to HUD, or to the State or unit of general local government, as appropriate:

(i) Any information referred to in paragraph (b)(1) of this section that the applicant should have disclosed under paragraph (a) of this section with respect to the application, but failed to do so.

(ii) Any information referred to in paragraph (b)(1) of this section that would have been subject to disclosure under paragraph (a) of this section, but that initially arose after the time for making disclosures under that paragraph, including the name and pecuniary interest of any person referred to in paragraph (b)(1)(ii)(B) of this section who did not have a pecuniary interest in the project or activity that exceeded the threshold in that paragraph at the time of application, but that now exceeds the threshold.

(iii) With regard to changes in information that was disclosed under paragraph (b)(1), (c)(1)(i), or (c)(1)(ii) of this section:

(A)(1) For programs administered by the Assistant Secretary for Community Planning and Development, any change in other government assistance under paragraph (b)(1)(i) of this section that exceeds the amount of such assistance that was previously disclosed by $250,000 or by 10 percent of the assistance (whichever is lower).

(2) For all other programs, any change in other government assistance under paragraph (b)(1)(i) of this section that exceeds the amount of such assistance that was previously disclosed.

(B) Any change in the amount of the pecuniary interest of a person under paragraph (b)(1)(ii) of this section that exceeds the amount of the previously disclosed interests by $50,000 or by 10 percent of such interests (whichever is lower).

(C) For programs administered by the Assistant Secretary for Community Planning and Development—

(1) Any change in a source of funds under paragraph (b)(1)(iii) of this section that exceeds the amount of all previously disclosed sources of funds by $250,000 or by 10 percent of those sources (whichever is lower); and

(2) Any change in a use of funds under paragraph (b)(1)(iii) of this section that exceeds the amount of all previously disclosed uses of funds by $250,000 or by 10 percent of those uses (whichever is lower).

(D) For all programs, other than those administered by the Assistant Secretary for Community Planning and Development—

(1) For projects receiving a tax credit under Federal, State, or local law, any change in a source of funds under paragraph (b)(1)(iii) of this section that was previously disclosed.

(2) For all other projects, any change in a source of funds under paragraph (b)(1)(iii) that exceeds the lower of—

(i) The amount previously disclosed for that source of funds by $250,000, or by 10 percent of the amount previously disclosed for that source, whichever is lower; or

(ii) The amount previously disclosed for all sources of funds by $250,000, or by 10 percent of the amount previously disclosed for all sources of funds, whichever is lower.

(E) For all programs, other than those administered by the Assistant Secretary for Community Planning and Development—

(1) For projects receiving a tax credit under Federal, State, or local law, any change in a use of funds under paragraph (b)(1)(iii) of this section that was previously disclosed.

(2) For all other projects, any change in a use of funds under paragraph (b)(1)(iii) of this section that exceeds the lower of—

(i) The amount previously disclosed for that use of funds by $250,000, or by 10 percent of the amount previously disclosed for that use, whichever is lower; or

(ii) The amount previously disclosed for all uses of funds by $250,000, or by 10 percent of the amount previously disclosed for all uses of funds, whichever is lower.

(2) *Period of coverage.* For purposes of paragraph (c)(1) of this section:

(i) An application for assistance subject to this subpart will be considered to be pending from the time the application is submitted until the Department communicates its decision with respect to the application to the applicant.

(ii) Assistance subject to this subpart will be considered to be provided from the time that the Department communicates its decision with respect to the application to the applicant until the applicant has discharged all its obligations under the terms of the assistance, including the submission of any required reports.

(3) *Instructions.* HUD will issue administrative instructions establishing the time for reporting under paragraph (c)(1) of this section both to HUD and to States and units of general local government.

(3) *Availability of disclosed material.* (1) *Disclosures to HUD.* HUD will make all information disclosed to it under this subpart available for public inspection. HUD will publish a Notice in the **Federal Register** indicating where and how the public may inspect this information, and for how long it will be available for inspection.

(2) *Disclosures to States and units of general local government.* Consistent with State and local law governing the disclosure of information to the public, each State and unit of general local government will make all information disclosed to it under this subpart available for public inspection. HUD will issue administrative instructions governing the retention and availability to the public of such information.

(Approved by the Office of Management and Budget under the control numbers 2535–0101 and 2502–0377)

**§ 12.34 Sanctions and remedies.**

(a) *Administrative remedies.* If HUD receives or obtains information providing a reasonable basis to believe that a violation of paragraph (a), (b), or (c) of § 12.32 has occurred, HUD will:

(1) If a recipient of the assistance has not been selected, determine whether to terminate the selection process or take other appropriate action; and

(2) If a recipient of the assistance has been selected, determine whether to:

(i) Void or rescind the selection, subject to review and determination on the record after opportunity for hearing;

(ii) Impose sanctions upon the violator, including debarment, subject to review of the determination on the record and after opportunity for hearing;

(iii) Recapture any funds that have been disbursed;

(iv) Permit the violating applicant that has been selected to continue to participate in the program; or

(v) Take any other actions that HUD considers appropriate. HUD will publish in the **Federal Register** a descriptive statement of each determination made, and action taken, under this paragraph (a).

(3) Hearings held pursuant to paragraph (a)(2)(i) or (a)(2)(ii) of this section shall be presided over by an administrative law judge appointed under 5 U.S.C. 3105 or detailed to HUD pursuant to 5 U.S.C. 3344. Hearings shall be governed by the procedures set forth at 24 CFR part 30, subpart D.

(b) *Civil money penalties.* If any person knowingly and materially violates any provision of § 12.32 (a), (b), or (c), HUD may impose a civil money penalty not to exceed $10,000 for each violation. Civil money penalties shall be in accordance with 24 CFR part 30.

## Subpart D—Limitation on Housing Assistance

**§ 12.50 Definitions.**

As used in this subpart:

*Assistance subject to this subpart* means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided under a program administered by the Department for use in, or in connection with, a specific housing project. The term includes assistance for the acquisition, construction, rehabilitation, conversion, modernization, renovation, or demolition of a housing project; the operation of a housing project; and incentives to extend low-income use under the Emergency Low Income Housing Preservation Act of 1987, as amended. The term also includes any change requested by the recipient in the amount of assistance previously provided, except changes resulting from annual adjustments in Section 8 rents under section 8(c)(2)(A) of the United States Housing Act of 1937. The term does not include contracts, such as procurement contracts, that are subject to the Federal Acquisition Regulation (FAR) (48 CFR chapter 1), and assistance for the provision of services in a housing project, such as child care. The term includes those elements of the following programs that make assistance available for a specific housing project (HUD will add other programs, as appropriate):

(1) Section 312 Rehabilitation Loans under 24 CFR part 510, except loans for single family properties.

(2) Community Development Block Grants under 24 CFR part 570 (only loan guarantees under subpart M, grants to Indian tribes under title I of the Housing and Community Development Act of 1974, and grants under the HUD-administered Small Cities program under subpart F).

(3) Transitional Housing under 24 CFR part 577.

(4) Permanent Housing for Handicapped Homeless Persons under 24 CFR part 578.

(5) Supplemental Assistance for Facilities to Assist the Homeless under 24 CFR part 579.

(6) Section 8 Housing Assistance Payments (only project-based housing under the Existing Housing and Moderate Rehabilitation programs under 24 CFR part 882, including the Moderate Rehabilitation program for Single Room Occupancy Dwellings for the Homeless under subpart H).

(7) Loans for Housing for the Elderly or Handicapped under section 202 of the Housing Act of 1959 (including operating assistance for Housing for the Handicapped under section 162 of the Housing and Community Development Act of 1987).

(8) Section 8 Housing Assistance Payments for Housing for the Elderly or Handicapped under 24 CFR part 885.

(9) Section 8 Housing Assistance Payments—Special Allocations—under 24 CFR part 886.

(10) Flexible Subsidy under 24 CFR part 219—both Operating Assistance under subpart B and Capital Improvement Loans under subpart C.

(11) Low-Rent Housing Opportunities under 24 CFR 904.

(12) Indian Housing under 24 CFR part 905.

(13) Public Housing Development under 24 CFR part 941.

(14) Comprehensive Improvement Assistance under 24 CFR part 968.

(15) Neighborhood Development Demonstration under section 123 of the Housing and Urban-Rural Recovery Act of 1983.

(16) Nehemiah Grants under 24 CFR part 280.

(17) Mortgage Insurance under 24 CFR subtitle B, chapter II (only multifamily projects).

(18) Shelter Plus Care Assistance under section 837 of the Cranston-Gonzalez National Affordable Housing Act.

(19) Implementation Grants for HOPE for Public and Indian Housing Homeownership under title IV, subtitle A, of the Cranston-Gonzalez National Affordable Housing Act.

(20) Implementation Grants for HOPE for Homeownership of Multifamily Units under title IV, subtitle B, of the Cranston-Gonzalez National Affordable Housing Act.

*Housing project* means—

(a) Property containing five or more dwelling units that is to be used for primarily residential purposes, including (but not limited to) living arrangements such as independent group residences, board and care facilities, group homes, and transitional housing, but excluding facilities that provide primarily non-residential services, such as intermediate care facilities, nursing homes, and hospitals.

(b) Residential rental property receiving a tax credit under Federal, State, or local law.

**§ 12.52 Limitation on housing assistance.**

(a) *Determination of amount of assistance; certification.* (1) *In general.* Before HUD makes any assistance subject to this subpart available with respect to a housing project for which other government assistance is, or is expected to be, made available, HUD will determine, and execute a certification, that the amount of the assistance is not more than is necessary to make the assisted activity feasible after taking account of the other government assistance.

(2) *Determination of amount of assistance.* (i) The Department may issue regulations, after providing notice and public comment, specifying the standards to be followed in making the determination under paragraph (a)(1) of this section, or may proceed by decision making to make the determination on a case-by-case basis. This case-by-case decision making is not subject the 24 CFR part 26.

(ii) In making the determination under paragraph (a)(1) of this section, the Department will consider the aggregate amount of assistance, from the

Department and from other sources, that is necessary to ensure the feasibility of the assisted activity. The Department will take into account all the factors relevant to feasibility, which may include (but not be limited to) past rates of returns for owners, sponsors, and investors; the long-term needs of the project and its tenants; and the usual and customary fees charged in carrying out the assisted activity.

(iii) In no event may the Department permit the aggregate amount of assistance to exceed the amount that the Department determines is necessary to make the assisted activity feasible. The use of other government assistance in a housing project is not prohibited, provided that the aggregate of the assistance subject to this subpart and the other government assistance does not exceed the amount necessary to make the assisted activity feasible.

(3) *Taking other government assistance into account.* If the Department determines that the aggregate assistance from the Department and from other government assistance for a housing project under paragraph (a)(2)(ii) exceeds the amount that the Department determines is necessary to make the assisted activity feasible, HUD will consider all options available to enable it to make the required certification. Among other things, HUD may impose a dollar-for-dollar, or equivalent, reduction in the amount of the HUD assistance to reflect the amount of the other government assistance. In grant programs, this could result in a reduction of any grant amounts not yet drawn-down. In loan programs or mortgage insurance programs, this could result in a reduction in the outstanding loan amount. In the Section 8 program, this could result in a reduction in the amount of the Section 8 subsidy.

(b) *Subsequent adjustments.* (1) *In general.* HUD will adjust the amount of assistance subject to this Subpart awarded or allocated to an applicant to compensate in whole or in part, as HUD determines appropriate, for any changes that are, or should have been, reported under § 12.32(c) or under paragraph (d) of this section. HUD may make these adjustments immediately, or in conjunction with servicing actions anticipated to occur in the near future (e.g., in conjunction with the next annual adjustment of Section 8 contract rents).

(2) *Amount of adjustment.* In determining the amount of any adjustment, HUD will consider all relevant factors, which may include (but not be limited to) the extent to which the changes affect the certification under paragraph (a)(1) of this section, the effect of the adjustment on the financial viability of the housing project and on any tenants, and the extent to which the need for an adjustment may be attributable to the failure of the applicant to make the disclosures required under § 12.32 (a), (b), or (c).

(3) *Applicability.* This paragraph (b) only applies to assistance subject to this subpart that was initially subject to paragraph (a)(1).

(4) *Definition.* For purposes of this paragraph (b), *assistance subject to the Subpart* includes assistance resulting from annual adjustments in Section 8 rents under section 8(c)(2)(A) of the United States Housing Act of 1937, unless the initial assistance to the project was made available before April 15, 1991, and no other assistance subject to this subpart was made available on or after that date.

(c) *Location of certification.* The certification referred to in paragraph (a)(1) will be retained in the project file for the housing project.

(d) *Required information.* If an applicant does not meet the disclosure threshold under § 12.32(a)(1), it must certify whether there is any other government assistance that is, or is expected to be made, available with respect to the housing project. HUD may also require any project subject to this subpart to submit such a certification in conjunction with the Department's processing of any subsequent servicing action on that project. If there is other government assistance for purposes of the two preceding sentences, the applicant must submit such information as HUD deems necessary to make the certification under paragraph (a)(1) of this section and the subsequent adjustments under paragraph (b), as appropriate.

(Approved by the Office of Management and Budget under control numbers 2535–0101 and 2503–0377)

**Appendix**

To help the reader understand the requirements of this part, the Department is providing the following chart. It contains an overview of the types of assistance covered by each subpart and of the requirements imposed, both in terms of the substantive requirements and the entity that must carry them out:

| Subpart | Assistance covered | Requirements; who must comply |
|---|---|---|
| Subpart B—Notice and Documentation of Assistance. | Assistance made available by HUD through competition..... | HUD:<br>1. Publish **Federal Register** Notice regarding the availability of assistance, and the application requirements and selection criteria to be used in providing the assistance.<br>2. Ensure that documentation is sufficient to indicate the basis on which the assistance was provided or denied. Five-year period for public inspection of documentation. |
| | Assistance made available by HUD through competition or on a discretionary (non-formula, non-"demand") basis. | HUD: Publish Notice in **Federal Register** regarding decisions to provide assistance |
| | Assistance made available on a competitive basis by a recipient that received the assistance through a HUD competition. | Recipient: Ensure that documentation is sufficient to indicate the basis on which assistance was provided or denied. Five-year period for public inspection of documentation. |
| | | State or unit of general local government recipient: Notify public regarding decisions to provide assistance. |
| Subpart C—Disclosure of Information. | Assistance made available for a specific project or activity by:<br>—HUD;<br>—A State or unit of general local government;<br>—Or an entity other than a State or unit of general local government, where the application must be submitted to HUD for any purpose | Applicant:<br>1. Disclose other government assistance, interested parties, and sources and uses of funds, if the applicant has received, or can reasonably be expected to receive, assistance in excess of $200,000 in the fiscal year.<br>2. Make updates to reflect substantial changes in information. |
| Subpart D—Limitation on Housing Assistance. | Assistance made available by HUD for a specific housing project. | HUD: Certify that the amount of assistance is not more than is necessary to provide affordable housing. Make post-assistance adjustments based on updates, above. |

## PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

2. The authority citation for part 207 is revised to read as follows:

**Authority:** Secs. 207, 211, National Housing Act (12 U.S.C. 1713, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Sections 207.258 and 207.258b are also issued under sec. 203, Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z–11(e)).

3. In § 207.17, a new paragraph (d) is added to read as follows:

**§ 207.17 Classification; disclosure.**

* * * * *

(d) *Mortgagors with projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance.* Mortgagors with projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance (as defined in 24 CFR 12.30) may be regulated by the Commissioner as limited distribution mortgagors.

4. In § 217.19, a new paragraph (b)(4) is added to read as follows:

**§ 207.19 Required supervision of private mortgagors.**

* * * * *

(b) * * *

(4) For projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance (as defined in 24 CFR 12.30), the Commissioner may determine the amount of any allowable distribution or disbursement from surplus cash. After the amount of allowable distributions is deducted from surplus cash, any cash remaining at the end of the semiannual or annual Fiscal period will be placed in a residual receipts account maintained by the mortgagee. Residual receipts shall be under the control of the Commissioner, and shall be disbursed only on the direction of the Commissioner, who shall have the power and authority to direct that the residual receipts, or any part thereof, be used for such purposes as the Commissioner may determine. The mortgagee will be required to deliver the funds in this account to the Commissioner, if the latter requests it. The Commissioner may also restrict the use of the working capital deposit described in §§ 207.19(c)(1) (i) and (ii).

* * * * *

## PART 220—MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS FOR URBAN RENEWAL AND CONCENTRATED DEVELOPMENT AREAS

5. The authority citation for part 220 continues to read as follows:

**Authority:** Secs. 207, 211, 220, National Housing Act (12 U.S.C. 1713, 1715b, 1715k); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

6. In § 220.505, a new paragraph (c) is added to read as follows:

**§ 220.505 Eligible mortgagors.**

* * * * *

(c) *Mortgagors with projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance.* Mortgagors with projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance (as defined in 24 CFR 12.30) may be regulated by the Commissioner as limited distribution mortgagors.

## PART 221—LOW COST AND MODERATE INCOME HOUSING MORTGAGE INSURANCE

7. The authority citation for part 221 is amended to read as follows:

**Authority:** Secs. 211, 221, National Housing Act (12 U.S.C. 1715b, 1715*l*); sec. 221.544(a)(3) is also issued under sec. 201(a), National Housing Act (12 U.S.C. 1707(a)).

8. Section 221.510 is amended by adding a new paragraph (g) to read as follows:

**§ 221.510 Eligible mortgagors.**

* * * * *

(g) *Mortgagors with projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance.* Mortgagors with projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance (as defined in 24 CFR 12.30) may be regulated by the Commissioner as limited distribution mortgagors.

9. In § 221.532, the section heading is revised, and a new paragraph (d) is added, to read as follows:

**§ 221.532 Supervision applicable to limited distribution mortgagors and mortgagors with projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance.**

* * * * *

(d) For projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance (as defined in 24 CFR 12.30), the Commissioner may determine the amount of any allowable distribution or disbursement from surplus cash. After the amount of allowable distributions is deducted from surplus cash, any cash remaining at the end of the semiannual or annual Fiscal period will be placed in a residual receipts account maintained by the mortgagee. Residual receipts shall be under the control of the Commissioner, and shall be disbursed only on the direction of the Commissioner, who shall have the power and authority to direct that the residual receipts, or any part thereof, be used for such purposes as the Commissioner may determine. The mortgagee will be required to deliver the funds in this account to the Commissioner, if the latter request it. The Commissioner may also restrict the use of the working capital deposit described in § 221.540(a).

## PART 231—HOUSING MORTGAGE INSURANCE FOR THE ELDERLY

10. The authority citation for part 231 continues to read as follows:

**Authority:** Secs. 211, 231, National Housing Act (12 U.S.C. 1715b, 1715v); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

11. In § 231.8, new paragraphs (c) and (d) are added to read as follows:

**§ 231.8 Supervision of mortgagors.**

* * * * *

(c) *Mortgagors with projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance.* Mortgagors with projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance (as defined in 24 CFR 12.30) may be regulated by the Commissioner as limited distribution mortgagors.

(d) *Projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance.* For projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance (as defined in 24 CFR 12.30), the Commissioner may determine the amount of any allowable distribution or disbursement from surplus cash. After the amount of allowable distributions is deducted from surplus cash, any cash remaining at the end of the semiannual or annual Fiscal period will be placed in a residual receipts account maintained by the mortgagee. Residual receipts shall be under the control of the Commissioner, and shall be disbursed only on the direction of the Commissioner, who shall have the power and authority to direct that the residual receipts, or any part thereof, be

used for such purposes as the Commissioner may determine. The mortgagee will be required to deliver the funds in this account to the Commissioner, if the latter requests it. The Commissioner may also restrict the use of the working capital deposit described in §§ 207.19(c)(1) (i) and (ii).

## PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

12. The authority citation for part 232 is revised to read as follows:

**Authority:** Secs. 211, 232, 244, National Housing Act (12 U.S.C. 1715b, 1715w, 1715z(9)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

13. Section 232.20 is revised to read as follows:

**§ 232.20 Eligible mortgagors.**

(a) *In general.* All mortgagors must be approved by the Commissioner and must possess the legal powers necessary and incidental to operating the project, unless a mortgagor leases the property or project to a qualified operator, in which case the lessee must be approved by the Commissioner and must possess the legal powers necessary and incidental to operating the project.

(b) *Mortgagors with projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance.* Mortgagors with board and care projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance (as defined in 24 CFR 12.30) may be regulated by the Commissioner as limited distribution mortgagors.

14. Section 232.45 is revised to read as follows:

**§ 232.45 Supervision by Commissioner.**

(a) *In general.* The Commissioner may regulate and restrict the mortgagor as long as the Commissioner is the insurer, holder, or re-insurer of the mortgage. Such regulation or restriction may be in the form of a regulatory agreement, corporate charter, or such other means as the Commissioner may approve.

(b) *Projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance.* For board and care projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance (as defined in 24 CFR 12.30), the Commissioner may determine the amount of any allowable distribution or disbursement from surplus cash. After the amount of allowable distributions is deducted from surplus cash, any cash remaining at the end of the semiannual or annual Fiscal period will be placed in a residual receipts account maintained by the mortgagee. Residual receipts shall be under the control of the Commissioner, and shall be disbursed only on the direction of the Commissioner, who shall have the power and authority to direct that the residual receipts, or any part thereof, be used for such purposes as the Commissioner may determine. The mortgagee will be required to deliver the funds in this account if the latter requests it. The Commissioner may also restrict the use of the working capital deposit described in § 232.61(b)(1).

## PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

15. The authority citation for part 241 continues to read as follows:

**Authority:** Secs. 211, 241, National Housing Act (12 U.S.C. 1715b, 1715z–6); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

16. Section 241.130 is revised to read as follows:

**§ 241.130 Supervision by Commissioner.**

(a) *In general.* The Commissioner may regulate and restrict the mortgagor as long as the Commissioner is the insurer, holder, or re-insurer of the mortgage. Such regulation or restriction may be in the form of a regulatory agreement, corporate charter, or such other means as the Commissioner may approve.

(b) *Morgagors with projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance.* Mortgagors with projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance (as defined in 24 CFR 12.30) may be regulated by the Commissioner as limited distribution mortgagors.

(c) *Projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance.* For projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance (as defined in 24 CFR 12.30), the Commissioner may determine the amount of any allowable distribution or disbursement from surplus cash. After the amount of allowable distributions is deducted from surplus cash, any cash remaining at the end of the semiannual or annual Fiscal period will be placed in a residual receipts account maintained by the mortgagee. Residual receipts shall be under the control of the Commissioner, and shall be disbursed only on the direction of the Commissioner, who shall have the power and authority to direct that the residual receipts, or any part thereof, by used for such purposes as the Commissioner may determine. The mortgagee will be required to deliver the funds in this account to the Commissioner, if the latter requests it. The Commissioner may also restrict the use of any required working capital deposit described in § 232.61(b)(1).

## PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

17. The authority citation for part 882 continues to read as follows:

**Authority:** Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

18. Section 882.714 is amended by adding a new paragraph (c)(4), to read as follows:

**§ 882.714 Initial contract rents.**

* * * * *

(c) *Rent reasonableness limitation.*

* * * *

(4) The initial Contract rent may not be more than HUD determines necessary to make the project feasible after taking account of other government assistance, in accordance with 24 CFR 12.52.

* * * * *

19. Section 882.715 is amended by adding a new paragraph (c), to read as follows:

**§ 882.715 Contract rent adjustments.**

* * * * *

(c) During the period when assistance is being provided under the Contract, the PHA must, in accordance with HUD requirements, adjust the amount of the assistance, as provided by 24 CFR 12.52.

20. Section 882.720 is amended by striking "and" at the end of paragraph (b)(3)(ix), by redesignating paragraph (b)(3)(x) as paragraph (b)(3)(xi), and by adding a new paragraph (b)(3)(x), to read as follows:

**§ 882.720 PHA unit selection policy.**

* * * * *

(b) *Specific selection policy requirements.* * * *

(3) * * *

(x) Disclosure of information in accordance with 24 CFR 12.52; and

21. Section 882.730(b) is revised to read as follows:

**§ 882.730 Agreement to enter into Housing Assistance Payments Contract, and Contract Rents in agreement.**

* * * * *

(b) *Contact Rents in Agreement.* The Agreement must list the Contract Rents (as determined by the PHA in accordance with § 882.714, *Initial Contract Rents*) that will apply to the units after they are constructed or rehabilitated. The amounts of the Contract Rents that are listed in the Agreement or, if applicable, as adjusted under § 882.732(c) or § 882.714(c)(4), shall be the initial Contract Rents upon execution of the Contract. These initial Contract Rents may not be increased for any reason. (After Contract execution, the Contract Rents may be adjusted during the term of the Contract in accordance with § 882.715).

22. Section 882.732(c) is revised to read as follows:

**§ 882.732 New construction or rehabilitation period.**

* * * * *

(c) *Changes.* The Owner must obtain prior PHA approval for any changes from work specified in the Agreement that would alter the design or the quality of the required new construction or rehabilitation. The PHA may disapprove any changes requested by the Owner. PHA approval of changes may be conditioned on establishing lower initial Contract Rents in the amount determined by HUD. If the Owner makes any changes without prior PHA approval, the PHA approval, the PHA may request HUD to lower the initial Contract Rents in the amount determined by HUD, and may require the Owner to remedy any deficiencies, prior to, and as a condition for, acceptance of the units. Initial Contract Rents, however, shall not be increased because of any change from the work specified in the Agreement as originally executed or for any other reason. When a HUD insured or a HUD coinsured multifamily mortgage is used to finance new construction or rehabilitation of the units to which assistance is to be attached under this subpart G, HUD may adjust the initial Contract Rents to reflect any reduction in the amount necessary to amortize the insured or coinsured mortgage. HUD may adjust the initial Contract Rents after taking account of other government assistance under 24 CFR 12.52.

23. Section 882.733 is amended by striking "and" at the end of paragraph (b)(2)(iv), by redesignating paragraph (b)(2)(v) as paragraph (b)(2)(vi), and by adding a new paragraph (b)(2)(v), to read as follows:

**§ 882.733 New construction or rehabilitation completion.**

* * * * *

(b) *Evidence of completion.* * * *

(2) * * *

(v) The Owner has disclosed information as provided in 24 CFR 12.52: and

* * * * *

24. Section 882.751 is revised to read as follows:

**§ 882.751 Responsibilities of the Owner.**

Section 882.117, *Responsibilities of the Owner,* applies. The Owner is also responsible for performing all of the Owner responsibilities under the Agreement, and during the term of the Housing Assistance Payments Contract, the Owner must disclose information as provided in 24 CFR 12.52.

Dated: March 6, 1991.

**Jack Kemp,**

*Secretary.*

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## INFORMATION AND ASSISTANCE



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## LIST OF PUBLIC LAWS

**Last List March 11, 1991**

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**S.J. Res. 58/Pub. L. 102-9**

To designate March 4, 1991, as "Vermont Bicentennial Day". (Mar. 11, 1991; 105 Stat. 28; 1 page) Price: $1.00

# Public Laws

**102d Congress, 1st Session, 1991**

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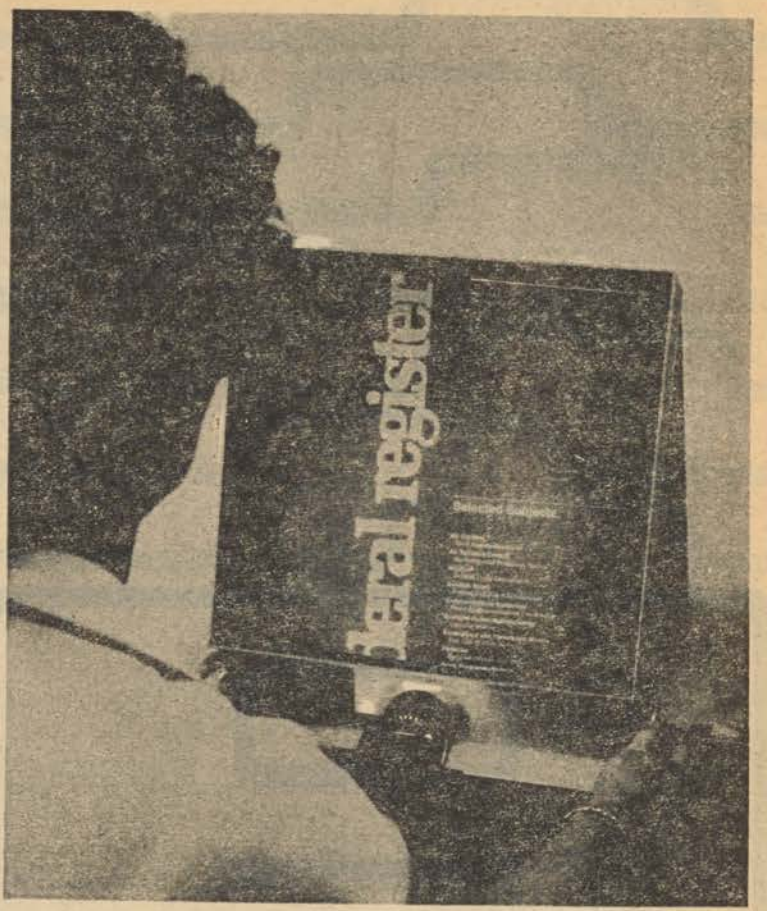


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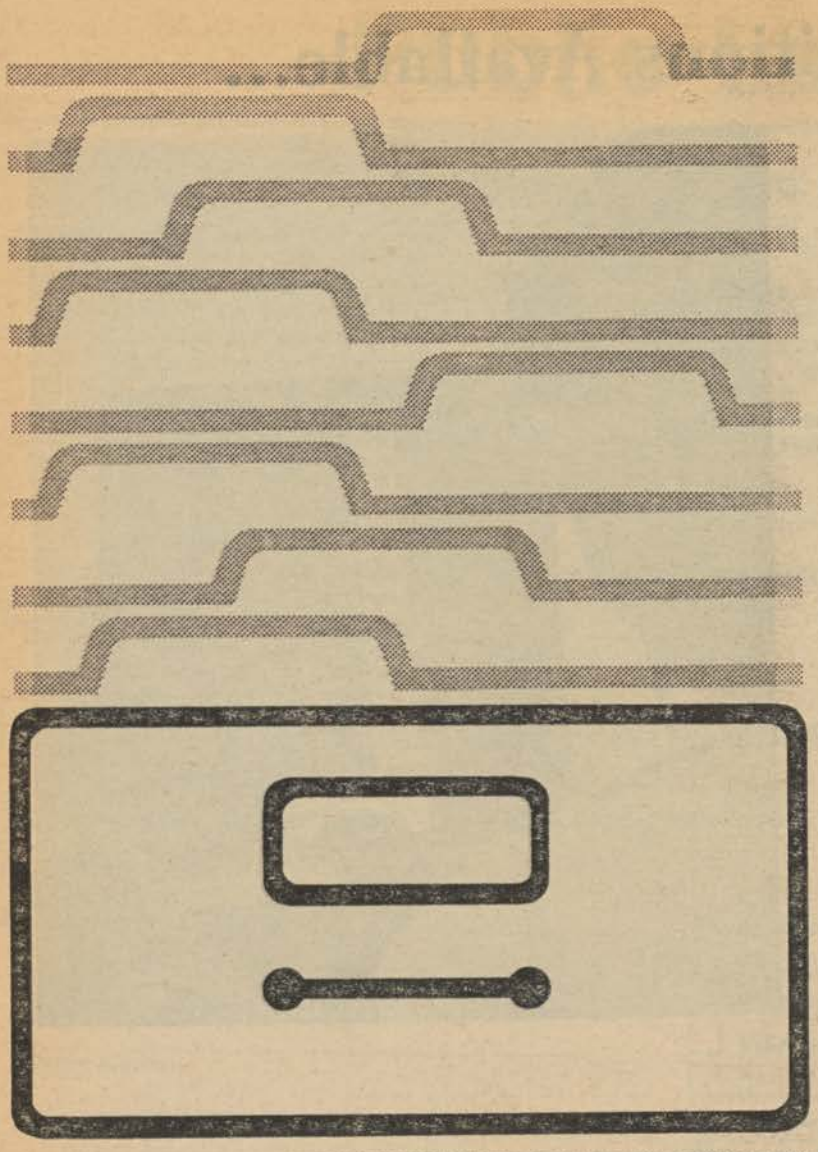

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